The Compleat

Attorney's Practice IN ENGLISH,

In the Courts of

KING's BENCH AND COMMON PLEAS AT WESTMINSTER.

CONTAINING

The best Rules and Methods of PRACTICE therein, from the Commencement of the Action to the Execution; and also Forms of Original and Judicial Writs and Processes, and the greatest Variety of PRECEDENTS of Declarations, Pleadings, Demurrers, Issues, and Records for Trial, Judgments, Writs of Error, *Habeas Corpus's*, Prohibitions, Informations, *&c.* of any Book hitherto publish'd.

Likewise the

Law of ACTIONS; whether Personal, as Debt, Case, Covenant, Trespass, Trover, Slander, *&c.* or Real, as Ejectments, Assises, Formedons, Dower, *&c.* with particular Directions how to prosecute them.

All regulated and compleated,

Agreeable to the late STATUTES for altering and amending the Law.

VOLUME II.

In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns of *Edward Sayer*, Esq; for *F.* Clay, at the *Bible* without *Temple-Bar*; and *B.* Lintot, at the *Cross-Keys*, over-against St. *Dunstan's* Church in *Fleetstreet*. MDCCXXXVII.

A TABLE OF THE CONTENTS Of this Second VOLUME.

Of Iſſues, Records for Trial, Poſtea's, Verdicts and Judgments, &c. in B. R.

Page

THE Laws relating to Iſſues, *when an Iſſue is joined, and what requiſite therein* 1

An Iſſue where good, and where bad 4

The Laws and Orders of Court concerning Records *of Cauſes for Trial* 6

The Laws and Statutes relating to Juries, *Qualification of Jurors*, &c. 7

A TABLE of the Contents.

	Page
Abſtract of the new Act 3 Geo. 2. *for better regulating Juries*	9
Of Special Juries *by that Statute*	10
The Law concerning Verdicts *of Jurors, General and Special, when good and when not*	11
And the Laws and Statutes relating to Judgments *in Cauſes,* Nonſuits *and* Coſts, *&c.*	14
The Manner of Trials *in the Courts at* Weſtminſter, *and at the* Aſſiſes	19
Form *of making up an* Iſſue *in a Cauſe*	25
A Record *of* Niſi prius	27
A Jurata *for a Cauſe to be tried in* London	28
——— *For Trial in* Middleſex	29
——— *For a Trial at the* Aſſiſes	*ibid.*
A Writ of Venire facias	*ibid.*
A Diſtringas Juratorʼ	30
A Writ of Subpœna *for Witneſſes*	31
A Subpœna Ticket *for Witneſſes to appear*	32
~~*A* Poſtea *on a Trial*~~	*ibid.*
Poſtea *where the Defendant makes Default*	33
A Continuance of a Poſtea	35
A Verdict *in Debt, on Iſſue of Covenants perform'd,* &c.	*ibid.*
A Verdict upon an Iſſue on Plene Adminiſtravit, *for the Plaintiff*	36
The like Verdict in Caſe, and Judgment on ſuch Iſſue	*ibid.*
A Verdict for the Defendant, upon plene Adminiſtravit	37
A Verdict in Treſpaſs, upon Not Guilty	38
A Verdict in Aſſault and falſe Impriſonment, on ſeveral Iſſues	*ibid.*
Form *of entering* Judgments	39

	Page
A Judgment *by* Nil dicit *in Debt, without Trial*	42
Such a Judgment in Case, the same Term	42
A Judgment by Non Sum Informatus *in Debt*	43
A Judgment by Cognovit Actionem	44
Entry *of Judgment on a* Remittitur Damnpa, *after Writ of Inquiry*	45
Satisfaction *acknowledged on Record*	47
Docquets *of Entries by the Attornies of this Court*	*ibid.*
The Record of a Cause *in Action of the Case, with a* Writ of Inquiry, *and* Judgment *on* Demurrer	48
Entry *of the whole Record of an* Issue, Trial, Verdict *and* Judgment *in Action of Debt*	56
Entry *of a* Declaration *upon two Bills for Money, with the* Pleadings, Issue, *and a* Special Verdict, *and* Judgment *thereon*	69

Of Executions, and the several Writs thereof, on Judgments in B. R.

	Page
The Laws and Statutes concerning Executions *in general*	69
And the Writs Capias ad Satisfaciend. Fieri facias, Elegit, *&c.*	71
The Statute 2 Geo. 2. *for Relief of Debtors in Execution*	77
The Act 3 Geo. 2. *for amending that Law*	79
A Writ of Capias ad Satisfaciendum *in Debt*	80
A Teſtatum Ca. Sa.	81
A Ca. Sa. *for the Reſidue in Caſe*	82
A Ca. Sa. *upon a Judgment affirmed on Writ of Error*	84
Form *of a* Fieri facias *in Debt*	85
A Fi. fa. *on a Judgment in Caſe*	86
A Fi. fa. *againſt an Executor or Adminiſtrator*	*ibid.*
A Teſtatum Fi. fa. *in Debt*	87
The like Fi. fa. *with a* Non omittas	88
A Fi. fa. *againſt the Plaintiff for Coſts*	89
A Writ of Fi. fa. *againſt Bail*	*ibid.*
A Fi. fa. *for Reſtitution, upon Reverſal of a Judgment*	90
A Writ of Elegit *in Debt*	92
An Elegit *after a former, on Diſcovery of more Lands*	93
A Writ of Scire facias *upon a Judgment in Debt after a Year*	95

Page

A Sci. fac. *against an Administrator, with* Pleadings *therein, in Case* 96

A Sci. fa. *against the Bail, in Action of Debt, and their Plea thereto,* &c. 98

The Entry *of Execution by Default upon a* Sci. fac. 102

Of Audita Querela's, to avoid Execution in B. R.

The Law relating to Audita Querela's, *and where may be brought* 105

In what Cases it doth not lie, but other Remedy 110

The Judgment on this Writ to be discharged of Execution, &c. 112

Entry *of a Writ of* Audita Querela, *the* Declaration *in it, a* Demurrer, *and* Judgment 113

Of Writs of Error, and Proceedings thereon in B. R.

Page

The Laws, Statutes and Orders of Court concerning Writs of Error 121

In the King's Bench, Exchequer Chamber, *&c. how profecuted* 122

The many Caſes wherein Writ of Error lieth, Allowance of it, and who may bring the ſame 125, 127

Bail to be put in, and the Record certified 128

The Aſſignment of Errors, in what Manner done 131

The Plea in nullo eſt Erratum, *of* Diminution, Certiorari's, *&c.* 133, 134

Writ of Error to reverſe Fines *and* Recoveries 136

The Method *to ſue out a* Writ of Error *in the* King's Bench *on a Judgment in* C. B. 138

Error aſſigned *for Want of Original*, &c. *and the Proceſs therein* 144

Plea *in nothing it is erred* 146

Certiorari *to the* Cuſtos Brevium, *&c.* 147

To ſue a Writ of Error *in the* Exchequer Chamber *upon a Judgment in* B. R. 150

How a Writ of Error in Parliament *is brought* 153

And Writs of Error to *Ireland* or *Wales*, &c. 154

The Entry *of a* Writ of Error *brought in* B. R. *and Judgment thereupon* 155

A Record *of* Niſi prius *on* Iſſue *join'd in* Error 159
A Writ of Error coram vobis reſidet *in* B. R. *and Errors aſſign'd* 163
Aſſignment of ſeveral Errors in the Exchequer Chamber, *and a Writ to the Lord Chief Juſtice to certify* 165
Anſwer of the Lord Hardwick, *Chief Juſtice* 168
A Record remitted back in B. R. *with the Judgment affirmed* 170
A Writ of Error in Parliament, *to reverſe the Affirmance of a Judgment in the* Exchequer Chamber 172
Order of Houſe of Lords *to aſſign Errors* 173
Petition *for the Cauſe to be heard at the Bar of the Houſe* 174
Order of the Lords *for Hearing* 175
The Caſe *of the Defendant in Error* 176
Order *for affirming the Judgment in* Parliament, *and Remiſſion of the Record* 177
A Writ of Error to Ireland *on Judgment given there* 178
The Record *tranſmitted by the Chief Juſtice* 179

Of

Of Originals and Outlawries in B. R. and Reversing Outlawries.

	Page
The Laws and Statutes concerning Originals, and in what Cases issued	179, 180
Proceedings therein by Præcipe, *and* Capias, &c.	182
A Præcipe *in Action of Trespass*	184
A Capias *in* London *in Trespass*	185
An Original *in Trespass upon the Case*	*ibid.*
The Laws relating to Outlawry, *when a Man is outlawed*, &c.	187
Disabilities thereof, and how pleaded	189
Proclamation, and Exigent *awarded, in Order thereto, by Statute*	190
Method to sue a Person to Outlawry, *in Debt, Trespass*, &c. *in* B. R.	192
A Writ of Capias *in Case, in order to Outlawry*	195
Form *of the Writ of* Exigent	196
A Writ of Proclamation *to the County*	*ibid.*
A General Writ of Capias Utlagatum	197
A Special Capias Utlagatum.	*ibid.*
To Reverse *and* Supersede *an Outlawry, the Manner of Proceeding*	198
The several Causes of Reversing *Outlawries*	199
An Outlawry being reversed, Plaintiff may Declare on a new Original	200
A Writ of Supersedeas *on a* Capias *or* Exigent	201

Of Habeas Corpus Writs, &c. to remove Causes, Certiorari's, Procedendo's, and Supersedeas's in B. R.

	Page
The Laws and Statutes relating to Habeas Corpus's, *and how taken out*	202
What Suits may, and may not be removed by them	204
Manner of Proceeding on Hab. Corpus's	205
To remove a Person to the King's Bench *or* Fleet	206
A Writ of Habeas Corpus *returnable in Court*	208
A Habeas Corpus *to remove one from the* Fleet *to the* King's Bench *Prison*	209
A Habeas Corpus *to prosecute, and* ad Satisfaciend.	210
A Writ of Habeas Corpus *for a Witness to testify*	*ibid.*
A Habeas Corpus *on a* Cepi Corpus	211
The Laws concerning Certiorari's, *by which Causes are removed*	*ibid.*
When grantable on Motion, &c. in extraordinary Cases	212
A Certiorari *to remove a Plaint and Attachment*	213
A Certiorari *to certify the Record of a Judgment*	214
The Law of Procedendo's	215
A Procedendo *to the Sheriff's Court of* London	216
A Writ of Procedend. ad Judicium	217

The

Page

The Laws, Statutes and Orders of Court relating to Superſedeas's 218

A Superſedeas *to a Writ of Execution* 220

A Superſedeas *for Want of Declaring upon a* Latitat 221

A Superſedeas *on putting in Bail* *ibid.*

Of Prohibitions and Proceſs therein, in B. R.

The Laws and Statutes concerning the Writ of Prohibition 222

In what Caſes it lies to the Spiritual Court, Court of Admiralty, and Inferior Courts 223

Where has been denied, in ſeveral Inſtances 225

For Defamatory Words, &c. 228

The particular Proceedings *on Prohibitions* 229

A Prohibition *to the Court of Admiralty* 231

A Suggeſtion for Prohibition *to the Spiritual Court, on a* Modus *for Tithes* 236

An Attachment *upon a Writ of Prohibition* 240

A Declaration in Prohibition, *Plea and Iſſue* 245

A Special Plea therein, praying Writ of Conſultation, *&c.* 248

Of

A TABLE of the Contents.

Of Proceedings against Privileged Persons, Attornies, Members of Parliament, &c.

	Page
The Laws and Statutes relating to Privilege	250
Of Peers, and Members of Parliament, and Courts, Officers, Attornies, &c.	251, 252
To be pleaded how, and allowed	253
Of Suitors to Courts, Witnesses, &c.	255
A Bill *filed against a* Member of Parliament	256
The Writ of Summons *thereon*	258
A Diſtringas ad Reſpondend. *against a Lord by Original*	259
To ſue an Attorney *privileged, the Proceedings in*	261
Notice *of a Bill of* Middleſex *filed*	262
A Declaration *by Bill againſt an Attorney of* B. R.	*ibid.*
A Declaration by a Clerk *of the Office*	263
An Attachment of Privilege *for a Clerk in Court*	264
A Writ of Privilege *for an Attorney*	*ibid.*

Of Informations in the Court of B. R. and other Courts.

	Page
The Laws relating to Informations, *where brought at Common Law, and by Statute*	266
By the Attorney General, and Clerk of the Crown, &c.	268
What may be Pleaded to it	269
An Information *brought by the Attorney General*	270
Information *for converting Arable Land into Paſture, againſt the Stat.* 39 Eliz.	271
An Information *againſt a Sheriff for Extortion, in taking exceſſive Fees for an Execution, with Writ of* Subpœna, *and Plea*	272
Information *for Shooting in a Gun, againſt the Statute of* 33 H. 8.	277
An Information *for taking away Goods imported, without paying Cuſtoms*	278
Information *upon the Statute for Ingroſſing, and a Plea, Traverſe, and Judgment*	279

Of Proceedings in Ejectment in B. R. and C. B.

	Page
Farther Directions concerning Actions of Ejectment	282
Rule to appear and receive a Declaration, and confeſs Leaſe, Entry and Ouſter	283, 284
The Pleading and Proceedings to Trial	285
Party recovering to have Action for Meſne Profits, &c.	287
The Act 4 Geo. 2. *relating to ſerving Declarations in Ejectment on Tenants, where Rent is due*	288
A Leaſe *in* Ejectment, *in order to recover the Poſſeſſion of Lands,* &c.	290
A Pone *for an* Original *therein*	291
A Declaration *in Ejectment by* Original	292
A Declaration by Bill *in Ejectment*	293
Notice *at the Bottom of the Declaration*	294
Affidavit *of Service of a Declaration in Ejectment*	295
The common Rule *by Conſent*	*ibid.*
A Warrant *to the Tenant's Attorney to appear and plead*	298
A new *Declaration,* Plea *and* Iſſue *in Ejectment*	*ibid.*
A Judgment *in Ejectment after Verdict*	300
Entry *of* Judgment *by Default*	*ibid.*
A Judgment *in Ejectment, on Confeſſion of the Defendant*	301
A Writ of Habere facias Poſſeſſionem *on a Recovery in Ejectment*	302

A TABLE of the Contents.

Of the Court of Common Pleas.

	Page
The Original of this Court, and the Proceedings and Practice therein	304
The Power and Authority of the Judges, in determining Real Causes, &c.	305
And in all other Actions	*ibid.*
Admission of Attornies, &c.	306

Officers of C. B.

The Custos Brevium	306
The Prothonotaries	307
The Secondaries	308
The Clerk of the Warrants	*ibid.*
The Clerk of the Essoins	*ibid.*
The Filazers	309
The Clerk of the Seal	310
The Exigenters	311
The Clerk af the Outlawries	*ibid.*
The Clerk of the Juries	*ibid.*
The Clerk of the Treasury	312
The Clerk of the Errors	*ibid.*
The Chirographer	313
The Clerk of the King's Silver	*ibid.*
The Clerk of the Inrolments	314
The Warden of the Fleet	*ibid.*
The Clerk of the Papers	*ibid.*
The Cryer of the Court, &c.	*ibid.*

Of Writs, Appearances thereon, and Bail in C. B.

	Page
Inſtructions how drawn for common or ſpecial Writs	315
A Præcipe *for a ſpecial Writ*	*ibid.*
A Præcipe *in Debt againſt ſeveral Defendants*	316
A Writ of Capias *in Debt*	317
A Special Capias *againſt ſeveral Defendants*	*ibid.*
Form *of a* Pone *in Debt*	318
A common Capias *not finable*	*ibid.*
Forms of divers Acetiams	319
A Special Capias *in Caſe*	320
The Form of a Special Original	321
A Teſtatum Capias	322
A Non omittas *upon a* Capias	323
The Statutes and Orders of Court concerning Appearances *and* Bail *in* C. B.	324, 325
Appearances to be entered by Attornies, &c.	324
Bail how taken in this Court	325
By Entry *in the* Filazer's *Book in* London, *without Bail-piece, and attending a Judge*, &c.	327
The Condition *of a* Recognizance *of Bail*	329
Form of an Entry *of a Bail-Recognizance*	*ibid.*
Bail taken before Commiſſioners *in the Country, the Manner of doing it, to be tranſmitted up and filed*	330
A Bail-piece *before ſuch Commiſſioners*	333

Of Declarations, and Pleadings, &c. in C. B.

	Page
The Laws and Orders of Court relating to Declarations, *and their Delivery*	334
How Declarations delivered against Prisoners in the Fleet, *&c.*	336
A Declaration in Action of Debt *upon a Bond*	337
A Declaration in Debt, for Money to be paid on Day of Marriage or Death	338
A Declaration in Case, *for Money promis'd upon Marriage*	339
A Declaration on a Mutuatus *for Money lent*	340
A Declaration for Money due on Account	341
A Declaration against the Hundred, on a Robbery *committed upon the Highway*	*ibid.*
A Declaration in Case *for throwing down Inclosures*	344
A Declaration for not Repairing Fences of a Ground	346
A Declaration in Case *for Inclosing of Land, and depriving the Plaintiff of his Common*	348
A Declaration for over-charging a Common with Cattle.	350
A Declaration by a Chirurgeon for Cure of a Wound	352
A Declaration against a Chirurgeon for an Ill Cure	353
A Declaration in Trover *and Conversion*	355
A Declaration for Slander *and Defamation*	356

A TABLE of the Contents.

	Page
A Declaration in Action of Treſpaſs	358
A Declaration in Treſpaſs *and* Aſſault	360
A Declaration by an Attorney, *&c.*	*ibid.*
The Orders of Court concerning Pleas *and* Pleadings *in* C. B.	361
Rules to Plead in all Caſes, entered in the Prothonotary's Office	362
The Time allowed for Pleading, &c.	363
A Plea of Tender *of Money due on Bond*	365
A Plea Solvit ad Diem *to a Penal Bill, and Replication*	366
A Plea of Payment *to an Action upon ſeveral Promiſes*	*ibid.*
A Plea Non Aſſumpſit, *and Replication*	367
A Plea that did not aſſume *as to ſome Promiſes, and of a Releaſe as to others*	368
A Plea Non Aſſumpſit *within ſix Years, and Replication thereto*	370
A Plea of Non Sum Informatus *to one Promiſe, and* Non Aſſump. *to the other*	371
A Plea in Caſe, *that Defendant did not overcharge a Common*	372
A Plea that a Chirurgeon hath not Cured a Wound, and Replication	*ibid.*
A Plea of the General Iſſue *Not Guilty*	373
A Plea Not Guilty *in Treſpaſs*	374
A Plea and Judgment on a Reſpondeas Ouſter	*ibid.*

Of Iſſues and Records, Trials, Judgments, and Executions in C. B.

	Page
Inſtructions for making up Iſſues	375
An Iſſue *in this Court Form of, and entered*	*ibid.*
The Manner of making up Records, Rolls *amendable*, &c.	378
A Record of a Cauſe in Action of the Caſe	379
A Jurata *for the Aſſiſes*	382
Jurata *for a Trial in* Middleſex	383
A Jurata *for* London	*ibid.*
Form of the Warrants *of* Attorney	384
A Writ of Venire fac.	*ibid.*
Writ of Habeas Corpora	386
Of Subpœna *for Witneſſes*	387
The Proceedings to Trial *in* C. B.	388
A Notice *of Trial*	389
Affidavit *of the Defendant's Attendance, in order to Trial*	*ibid.*
Where the Defendant may try the Cauſe by Proviſo, *on Plaintiff's Default*, &c.	390
Special Verdicts *found on Trials*, Poſtea's, &c.	391
A Poſtea *of a Cauſe tried at the Aſſiſes*	392
The Method of entering Judgments *in* C. B.	393
A Judgment on Nil dicit *in Caſe*	394
A like Judgment in Action of Debt, and in Treſpaſs	395
Execution *made out, and Perſons charged in Execution*	396

	Page
Writ of Capias ad Satisfaciendum *in Case*	396
A Writ of Ca. Sa. *for Debt*, &c.	397
A Fieri facias *in Case, in Debt, and Trespass*	398
A Writ of Elegit *on Execution*	399
An Elegit *after a* Fieri facias *against Executors*	400
An Elegit *granted after an* Elegit	403
A Sale of a Term *of Years taken in Execution*	405
A Writ of Scire facias *brought by Executors against Executors*	406

Of Outlawries, Writs of Habeas Corpus, and of Privilege, &c. in C. B.

	Page
The Orders of this Court relating to Outlawries	408
And concerning Habeas Corpus's cum Causa, &c.	409
A Writ of Habeas Corpus *to the Sheriffs of* London	411
A Habeas Corpus *after a* Cepi Corpus	*ibid.*
The Privilege *of Attornies*, &c. *and of* Attachments *of Privilege*	412
Where an Attorney privileged may be forejudged *for Want of Appearance*, &c.	413

A TABLE of the Contents.

	Page
An Attachment of Privilege *in* C. B.	414
A Declaration *for an Attorney of this Court*	415
A Writ of Superſedeas *for an Attorney*	*ibid.*
A Certiorari *for an Attorney of the* Common Pleas	416
Declaration upon a Bill filed *againſt an Attorney*	417
Entry *of a* Forejudger *of an Attorney of* C. B.	*ibid.*
An Entry for Reſtoring an Attorney *forejudged*	418
Attachment *againſt an Attorney for Contempt*	420
A Commitment *to the Fleet Priſon*	*ibid.*

Of Proceedings in Aſſiſes and Formedons, Dower and Partition, Waſte, Replevins, and Homine Replegiando's, Quare Impedits, &c. in C. B.

	Page
A Writ of Aſſiſe *of* Novel Diſſeiſin	421
A Declaration, *with the* Tenant's Anſwer, *and* Judgment *in Aſſiſe*	422
Entry of Pleas, *&c. in Action of Aſſiſe*	426
A Formedon in Deſcender, *and Recovery thereon*	427
A Declaration in Warrantia Chartæ, *and Judgment*	430
A Count in Dower, *with divers Pleadings, Judgment, and Writ of Seiſin*	432
A Writ, Declaration and Judgment in a Partition	440
A Count in Action of Waſte, *and Writ of Inquiry*, &c.	442
A Plea in Waſte for Tenant for Years to be admitted and Defend the Action	445
A Count, Avowry, Trial and Judgment in Replevin *for Rent*	448
A Count in Replevin, *with ſpecial Avowry, large Pleadings, and a Demurrer*, &c. *on taking Diſtreſs for an Annuity*	457
A Count, Conuſance, Plea and Iſſue in Replevin, *for an Amercement*	468
A Writ de Homine Replegiando	473
An Alias *and* Pluries *to this Writ*	474

Page

A Declaration in Quare Impedit, *where the Plaintiff was seised of the Advowson in Fee* 475

A Plea of Not Informed, and Judgment, &c. in a Quare Impedit 480

Another Plea and Issue, in Quare Impedit 481

A Declaration in a Quare Impedit, *with a Plea, Judgment and Execution.* 483

Of

Of ISSUES,

Records for Trial,

POSTEAS,

Verdicts and Judgments, &c. *in* B. R.

VOL. II.

AN *Iſſue* in Law generally ſignifies the Point of Matter, iſſuing out of the Allegations and Pleas of the Plaintiff and Defendant in a Cauſe, to be tried by a Jury of twelve Men. 1 *Inſt.* 126.

When there ariſes on the Pleadings an Affirmation on the one Part, and a Denial on the other Part, then there is an Iſſue, which is to

be tried by the Country: And theſe Iſſues are of two Kinds; upon Matters of Fact, or Matter of Law; an Iſſue in Fact is where the Plaintiff and Defendant have agreed upon a Point to be tried by Jury; and Iſſue in Law, is where there is a Demurrer to a Declaration, Plea, *&c.* and a Joinder in Demurrer, which is an Iſſue at Law to be determined by the Judges. 1 *Co. Inſt.* 71.

Iſſues of Fact, whether it be true or falſe, that are triable by the Jury, are either General or Special; General, when it is left to them to try whether the Defendant hath done any ſuch Thing as the Plaintiff lays to his Charge; as when he pleads *Not guilty* to a Treſpaſs, *&c.* Special Iſſue is when ſome Special Matter, or Material Point alledged by the Defendant in his Defence, is to be tried: And where ſuch Special Matter is alledged, both Parties join thereupon, and ſo go to Trial by Jury, if it be a Queſtion of Fact; or to a Demurrer, if it be a Queſtion of Law. But where there is an Iſſue upon Not guilty, and there are other Iſſues on Juſtifications, the Trial of the General Iſſue is only Matter of Form, and the Subſtance is upon the Special Matter. *Cro. Jac.* 599.

A Plea being pleaded to the Declaration, and the Plaintiff's Attorney's Hand ſet to it, then the Iſſue is joined between the Plaintiff and Defendant, and not before; and ſuch an Iſſue, tho' but in Paper, and not Ingroſs'd, cannot be waved without Conſent of both Parties: Tho' if an Iſſue be ſo joined, and the Plaintiff neglects to enter it the ſame Term, the Defendant may, within the firſt five Days of the next

next Term, alter his Plea, and plead *de novo*; and if the Plaintiff will not try the Iſſue after joined, in ſuch Time as he ought to do the ſame, the Defendant may give him a Rule to enter it, which if he do not, he ſhall be *non-ſuited*. Alſo if the Defendant gives the Plaintiff a Rule to enter his Iſſue, he muſt bring the Record into the Office within four Days after Notice, if the Action be laid in *London* or *Middleſex*; and if it be farther off in the Country, it muſt be brought in before the *Continuance* Day of that Term, or a Nonſuit may be entered againſt the Plaintiff. 2 *Lill. Pract. Reg.* 84, 87.

There muſt be in every Iſſue an Affirmative and Negative; and the Negative ſhould be as broad and full as the Affirmative, to make the Iſſue: But if in Debt on Bond the Defendant pleads Payment, and concludes to the Country, without giving the Plaintiff Opportunity to deny the Payment; if the Jury in ſuch Caſe find the Money paid, it is good after Verdict, tho' there was no Negative and Affirmative. When a Defendant pleads, and the Plaintiff replies, and denies the Plea, the Defendant is to make up the Iſſue; for by the Plaintiff's Replication a new Iſſue is tendered. If a good Iſſue is offered to the Defendant, he ought not to plead over, but to join Iſſue; or the Plaintiff ſhall have Judgment: And where there are two Iſſues joined, one good, and the other bad, if entire Damages are given on both Iſſues, it will be erroneous; but if ſeveral Damages are found, the Plaintiff may releaſe the bad Damages, and have Judgment for the Reſt; and it is ſaid Judgment may be entered as to one

Part of an Iſſue, and a *Nolle proſequi* to another Part of the ſame Iſſue, where it may be divided. 1 *Ventr.* 213. 1 *Roll. Rep.* 86. *Sid.* 341. 1 *Saund.* 318. 2 *Lill. Reg.* 87, 88.

If there are ſeveral Things in a Declaration, upon which an Iſſue may be joined, and it is joined in any of them, it will be good; and an Affirmative and implied Negative may make an Iſſue. Where the Plaintiff's Declaration is good, and the Plea of the Defendant is ill; if the Plaintiff in his Replication tender an Iſſue upon ſuch ill Plea, and a Trial is had, and it is found for the Plaintiff, he ſhall have Judgment: And when the Defendant's Plea is naught, that the Plaintiff might have demurred upon it, and he doth not, but takes Iſſue, and 'tis found for the Defendant; this is aided by the Statute of Jeofails, and the Defendant ſhall have Judgment. So alſo where the Replication is ill, and Iſſue is taken upon it, and found for the Plaintiff, he may have Judgment. *Style* 151, 210. *Cro. Eliz.* 455. *Cro. Jac.* 312.

All Iſſues are to be certain and ſingle, and joined upon the moſt material Thing in the Cauſe, that all the Matter in Queſtion may be tried: An immaterial Iſſue joined, which will not bring the Matter in Queſtion to be tried, is not helped after Verdict, but there muſt be a Repleader; but an informal Iſſue is helped. A Judgment may be reverſed in Error, being on an immaterial Iſſue: Tho' the Statute 32 *H.* 8. *c.* 30. helps Misjoining of Iſſues. On a joint Treſpaſs by many Perſons, there muſt be only one Iſſue joined; and if ſeveral Offences are alledged againſt the Defendant, he ought to take all but one by *Proteſtation*, and offer an

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Iſſue upon that one and no more. But there may be a Plea to iſſue to Part, and a Demurrer to Part; which have no Dependance on each other. 2 *Lill. Reg.* 85. 2 *Lutw.* 1608. 2 *Lev.* 194. *Moor* 80. 1 *Saund.* 338.

An Iſſue muſt be joined in ſuch a Court that hath Power to try it, otherwiſe it is not well joined: And where Iſſue is not joined, there cannot be a good Trial, nor ought Judgment to be given. And in an Action for Damages, according to the Loſs which the Plaintiff hath ſuſtained, every Part ought to be put in Iſſue: In Action upon the Caſe for Service done for a Time certain, the Defendant is to put in Iſſue all the Time alledged in the Declaration. The Place ſhould not be made Part of the Iſſue, in a Tranſitory Action; as it muſt in real and mix'd Actions: But where it is material, and a Part of the Iſſue, there the Jury cannot find the Fact in another Place; tho' upon the General Iſſue pleaded, the Jury may find all local Things in another County. 2 *Nelſ. Abr.* 1042. 1 *Saund.* 269. 2 *Lutw.* 268. 6 *Rep.* 46.

Where there is Matter amounting to the General Iſſue, and Special Matter, they may be joined in one intire Plea, and it will be good: And there is a General Iſſue, wherein the Defendant may give the Special Matter in Evidence, for Excuſe or Juſtification by Virtue of ſeveral Statutes; and upon the General Iſſue in ſuch Caſes, the Defendant may give any Thing in Evidence, which proves the Plaintiff hath no Cauſe of Action. 3 *Lev.* 41. 1 *Inſt.* 283.

In real Actions, Cauſes grown to Iſſue are tried by a Jury of twelve Men of the County where the Cauſe of Action ariſes; and in Cri-

minal Caſes, Iſſues ought to be tried in the County where the Offence was committed; but this hath had ſome Alteration by Statute: If an Iſſue is of two Matters in two Counties, Trial may be in one County, by the Statute 21 *Jac.* 1. as well as where the Matter in Iſſue ariſes in two Places in the ſame County, and the Trial is by one. 3 *Inſt.* 80. 2 *Rep.* 93. 2 *Lev.* 121.

A *Record* of an Iſſue made up ready for Trial, may be amended on Motion and Leave of the Court, ſo as not to deface the Record; and notwithſtanding a Cauſe be entered to be tried, upon paying Coſts to the Defendant: But this will not be allowed, if it may not be done without defacing or much altering the Record. *Mich.* 22 *Car. B. R.* 2 *Lill. Reg.* 420.

The Record cannot be amended without a Rule of Court, grounded upon Motion; and the Court will not ſupply a Blank left in a Record, to make it perfect, when before it was defective, as that would be to make a Record, which is not the Office of the Court to do, but to judge thereof. A Record that is raſed, if it be legible, remains good notwithſtanding the Raſure: And in Caſe of a Raſure in a Judgment done by Practice, the Record hath been ordered to be amended, and a Special Entry thereof to be made; but tho' the Record be made perfect by this Means, the Offender may be indicted for Felony, on the Stat. 8 *H.* 6. *c.* 12. For not only ſuch an Alteration whereby a Judgment is reverſed, but alſo ſuch whereby it is reverſable, whether it be or be not afterwards amended by the Court, is within that Act, making it Felony to take away

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or avoid any Record, &c. 2 *Roll. Rep.* 81. 1 *Hawk. P. C.* 113.

If a Record is to be read in Court, the Counſel at the Bar muſt open the Effect of it, after read by the Clerk of the Court, by Cuſtom and Practice; tho' the Court if they pleaſe may permit it to be read afterwards, and then after Reading, &c. it is by Rule of Court ordered to be ſet down for a *Concilium*. And Attornies are to enter the whole Record upon the Roll, after a Cauſe is tried, before the next Term after the Trial, on Pain of 20 *s.* That the Record may be ſpoken to next Term, if there be Cauſe, and the Client not be delayed. *Hill.* 1649. 2 *Lill.* 421.

All Records of *Niſi prius* in *London* and *Middleſex*, are to be ſealed on or before the reſpective Days appointed by the Lord Chief Juſtice in the Sittings Paper for their Trial, by *Ord. Cur. Paſch.* 7 *Geo.* 1. But no Record of *Niſi prius* ſhall be ſealed, before the Iſſue, or an *Incipitur* is entered on Record, and ſigned, &c. And Rolls may not be filed without Licence, after the ſubſequent Term wherein it ought to be done. *Ord. Mich.* 3 *Ann. Trin.* 9 *W.* 3.

The *Jury* for Trying of a Cauſe is to conſiſt of Freemen, indifferent, and not outlawed, or infamous; Aliens, Men attainted of any Crime, ought not to ſerve on Juries; and Infants, Perſons ſeventy Years old, Clergymen, Apothecaries, &c. are by Law exempted from ſerving upon Juries. And Jurors impanell'd ſhall be the next Neighbours, moſt ſufficient, and leaſt ſuſpicious, or the Officer that returns them ſhall forfeit double Damages: And if a Juror take any Thing of either Party to give his Verdict,

he ſhall forfeit ten Times as much as taken, or ſuffer a Year's Impriſonment. Alſo Iſſues are to be levied on Jurymen for Non-appearance; but on a reaſonable Excuſe, proved by the Oaths of two Witneſſes, theſe Iſſues for Default may be diſcharged. 3 *Inſt.* 221. 4 *Inſt.* 447. *Stat.* 28 *Ed.* 1. *c.* 9. 38 *Ed.* 3. *c.* 12. 35 *H.* 8. *c.* 6.

By Statute, the Qualification of Jurors is declared to be 10 *l. per Annum* Freehold or Copyhold, and of Tales-men 5 *l.* a Year: And Conſtables, *&c.* of Towns in every County, at *Michaelmas* Quarter-Seſſions yearly are to return and give in to the Juſtices of Peace, Liſts of Perſons between the Age of twenty-one and ſeventy Years, qualified to ſerve on Juries; Duplicates whereof are to be delivered to the Sheriffs of Counties by the firſt of *January* following: And no Sheriff ſhall impanel or return any Perſon to ſerve in any Jury at the Aſſizes, *&c.* but ſuch as ſhall be named in the ſaid Liſts; Sheriffs doing otherwiſe, or neglecting their Duty therein, ſhall forfeit 20 *l.* And Conſtables, *&c.* failing to make ſuch Returns and Liſts as aforeſaid, are liable to the Penalty of 5 *l.* In the County of *York*, the Grand Jury are to be Freeholders and Copyholders, having each 80 *l. per Annum* Lands, *&c.* And every Summons of Jurors to ſerve, ſhall be made by the Sheriff or Officer ſix Days before, ſhewing to the Perſon the Warrant under the Seal of Office, where he is nominated to ſerve; and in Caſe of the Perſon's Abſence from Home, a Note in Writing under the Hand of the Officer is to be left at his Dwelling-houſe. 4 & 5 *W.* & *M.* *c.* 24. 7 & 8 *W.* 3. *c.* 32. 3 *Ann.* *c.* 18.

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The late Statute for *better regulating Juries*, enacts, that Lists of Jurors qualified, according to former Laws, are to be made from Rates of Parishes, and yearly fixed on Doors of Churches, *&c.* twenty Days before *Michaelmas*, that so Notice may be given of Persons omitted, or inserted by Mistake; and Returning Officers wilfully omitting Freeholders qualified, or inserting others, shall forfeit 20*s.* and being certified to the Quarter-Sessions, the Justices of Peace are to direct the Clerk of the Peace to make the Lists Right: Duplicates of such Lists, when adjusted, to be delivered by the said Clerk to the Sheriffs of Counties, under the Penalty of 20*l.* and the Sheriffs shall enter the Names of the Persons in a Book alphabetically, with their Additions, and Places of Abode, *&c.* And if any Sheriff, or other Officer, shall summon any other Persons to serve on Juries, or the Clerk of Assize, *&c.* Record an Appearance when the Party did not appear, they are to be fined by the Judges not above 10*l.* nor less than 40*s.* The same Penalty is inflicted for Sheriffs taking Money to excuse Persons from serving; and the Judges may Fine Sheriffs, *&c.* not exceeding 5*l.* for returning Jurors, who have serv'd two Years before in any County, except of *York*, and within four Years there, *&c. Stat.* 3 *Geo.* 2. *c.* 25.

And Sheriffs on the Return of Writs of *Venire facias* are to annex a Panel of Names and Additions of a competent Number of Jurors named in the Lists, not less than forty-eight or more than seventy-two, (without Direction of the Judges) who shall be summoned to serve at the Assizes, *&c.* And the Names of the Persons im-

impanelled ſhall be written in diſtinct Pieces of Paper, and delivered to the Marſhal of the Judge of Aſſize, and he is to cauſe them to be rolled up in the ſame Manner and put together in a Box or Glaſs; and when any Cauſe is brought on to be tried, ſome indifferent Perſon ſhall in open Court draw out *Twelve of the ſaid Papers of Names*, one after another, and they not being challenged are to be of the Jury to try the Cauſe; but if any are challenged and ſet aſide, or do not appear, then a further Number to be drawn 'till there is a full Jury, *&c.* And their Names when ſworn ſhall be kept apart in ſome other Box or Glaſs, 'till they have given in their Verdict, *&c.* and then the Names ſhall be rolled up again, and returned to the former Box, to be kept with the other Names, as long as any Cauſe remains for Trial: And where a Cauſe comes on, before the Jury in any other ſhall have given their Verdict, the Court ſhall order Twelve of the Reſidue of Papers to be drawn, *&c.* Every Juror whoſe Name ſhall be drawn, and ſhall not appear after three Times called, upon Oath made that he hath been lawfully ſummoned, ſhall forfeit not exceeding 5 *l.* nor under 40 *s.* unleſs reaſonable Cauſe of Abſence be proved by Affidavit to the Satisfaction of the Judge who ſits. *Stat. ibid.*

The Courts at *Weſtminſter*, on a Motion made in Behalf of the King, or of any Plaintiff or Defendant, in an Indictment, Information, or any Action or Suit whatſoever, are to order a Jury to be ſtruck for the Trial of Iſſues joined and triable by a Jury of twelve Men, as *Special Juries* are uſually ſtruck in thoſe Courts, *&c.*

&c. And when ordered by Rule of Court in Cauſes ariſing in any City, the Jury ſhall be taken out of Liſts or Books of Perſons qualified, which are to be brought by the Sheriffs, *&c.* before the proper Officer, as the Freeholders Book is for Cauſes ariſing in Counties: Perſons having Eſtates held for 500 Years, or 99 Years, or other Term determinable on Lives, *&c.* of 20 *l. per Annum*, over and above the reſerved Rent payable thereout, are declared qualified to ſerve on Juries, and to be inſerted in the Freeholders Book, *&c.* and Sheriffs of any County or City, ſhall not impanel Perſons on any Jury for the Trial of Capital Offences, who would not be qualified for ſerving in Civil Cauſes. In *London* Jurors are to be Houſe-keepers, having Lands or Goods to the Value of 100 *l.* who may be examined on Oath as to their Qualification, *&c. Ibid.*

And by a ſubſequent Act, Leaſeholders on Leaſes where the Rent amounts to 50 *l.* a Year, are liable to ſerve on Juries in the County of *Middleſex*; but no Perſon ſhall be return'd to ſerve as a Juror, who has ſerved two Terms before in that County. 4 *Geo.* 2. *c.* 7. And the Statutes 3 *&* 4 *Geo.* 2. are made perpetual; and Juſtices of Aſſiſe for the Counties Palatine of *Cheſter*, *Lancaſter*, *&c.* in any Indictment, Information or Suit, on Motion may appoint a Jury to be ſtruck for Trial, in like Manner as Special Juries in the Courts of Law at *Weſtminſter*. Stat. 6 *Geo.* 2. *c.* 37.

A *Verdict* is the Anſwer of the Jury given to the Court, concerning the Matter of Fact in any Cauſe committed to their Trial; wherein every one of the Twelve Jurors muſt agree, or

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it cannot be a Verdict: And the Jurors are to try the Fact, and the Judges to adjudge according to the Law that ariſes thereon. Verdicts are General, when the Jury give them in general Terms according to the Iſſue, as Guilty, or Not guilty, &c. or ſpecial, where they find the Matter at large, according to the Evidence given, and pray the Judgment of the Court what the Law is in ſuch a Caſe: And Verdicts are publick, given in open Court; or privy, given out of Court, before any of the Judges thereof; but the Jury may vary from this Verdict, and when they come into the Court, and before it is recorded, give a contrary one. 1 *Inſt.* 226, 227. 5 *Mod.* 351.

In all Caſes, the Jury may give a general or ſpecial Verdict; and if pertinent to the Point in Iſſue, the Judges are bound to receive it: So if the Jury will take upon them to find againſt the Direction of the Court, any Thing in Matter of Law; but if they give a falſe Verdict, they are liable to Attaint, &c. If the Plaintiff and Defendant conſent to have the Jury find a Special Verdict, yet they may bring in a general Verdict; but this is not uſual: Where the Court directs the Jury to find any Special Verdict, in Civil Caſes, one of the Counſel on each Side agree upon Notes for it, and draw them up, and ſet their Hands thereto, and then they are to be delivered to the Jury in convenient Time for them to conſider of; and if the Parties diſagree, or the Special Verdict is drawn contrary to the Notes agreed upon, the Court will rectify it on Motion: Though if a Matter of Fact be left out in the Notes drawn by Counſel, this cannot be

be amended. *Mich.* 22 *Car. B. R.* 2 *Lill. Reg.* 645.

The Verdict muſt anſwer the Iſſue in all Things, or it will not be good: But if the Jury find the Iſſue and more, it is good for the Iſſue, and void for the Reſt; and where they find a Point in Iſſue, and a ſuperfluous Matter over, that ſhall not vitiate the Verdict. If a Verdict be inſufficient, or uncertain; or if it be given when there is no Iſſue joined, *&c.* Judgment ſhall not paſs thereupon: And upon an imperfect Verdict, a Jury ſhall be ſummoned to try the Cauſe afreſh: The Statute of *Jeofails* helps after a Verdict, as it ſuppoſes the Matter left out was given in Evidence, and that the Judge directed accordingly; but this doth not extend to Real Actions, or Actions *Qui tam, &c.* if there be any Error in the Proceedings, and where it doth not appear in the Declaration that the Plaintiff had ſome Cauſe of Action, *&c.* 2 *Lev.* 253. 1 *Saund.* 154, 155. *Mod. Ca.* 4. 1 *Mod. Rep.* 292.

If a Juryman withdraw from his Fellows, or keep them from giving their Verdict without aſſigning any Reaſon, he ſhall be fined; but not if he differ from them in Judgment: And if Jurors eat or drink at the Coſt of him for whom they give their Verdict, before they are agreed; or caſt Lots whether they ſhall find for Plaintiff or Defendant; or if they ſend for a Witneſs after gone from the Bar, and he repeats his Evidence again; and where a Verdict is given contrary to the Evidence, and againſt the Directions of the Court, *&c.* In all theſe Caſes the Verdict may be ſet aſide. *Dyer* 53. 1 *Vent.* 125. 2 *Lev.* 140.

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When a Verdict is found for the Plaintiff, and he will not enter it, the Defendant on Motion may compel him to do it; or the Defendant may enter it himſelf: And after any Verdict is return'd in Court, it cannot be amended. On Return of Verdicts, in all Civil Caſes, given at the Aſſiſes, to the Courts above, the Judges there give Judgment for the Party for whom it is found. 1 *Inſt.* 217.

Judgment is the End of the Law; it is the Determination or Sentence of the Court upon the Suit: Alſo Judgment may be given on Default, Confeſſion, Demurrer, and upon Trial of the Iſſue. A Judgment given contrary to the Verdict found in the Cauſe, is not good; for it is to be warranted by the Verdict: And where one entire Judgment is given againſt two ſeveral Perſons, and one of them is an Infant, if he be not joint Executor with the other Party, the whole Judgment will be void; which being entire cannot be divided. But where there is a Verdict againſt one Party, and not the other, it is otherwiſe; in ſuch Caſe Judgment may be for the Plaintiff to recover againſt him where found, and a *Nil capiat per Billam* be entered againſt the Plaintiff as to the other. 1 *Saund.* 216. *Mich.* 22 *Car.* 2. *Lill.* 100.

Judgments are not only to be ſigned by a Judge, but entered of Record, before which they are no Judgments; and the Plaintiff's Attorney, after the *Poſtea* is brought into Court, if the Rule for that Purpoſe is out, may enter Judgment for his Client by the Courſe of the Court: Tho' if Judgment be entered for more than the Plaintiff demands in his Declaration,

or of any Thing not mentioned therein, it is erroneous. In a Judgment given to recover a Sum of Money, the Sum muſt be written in Words; and not in Figures, which may be eaſily altered: A Judgment was reverſed, becauſe the Time when it was given was in Figures, and the Sum recovered expreſs'd in Figures, *&c.* The Court may amend their Judgments of the ſame Term, but not of another Term. 2 *Lill. Reg.* 95, 97, 103, 104. 3 *Lev.* 430.

If Judgment be obtained in a Cauſe, but the Plaintiff doth not take out Execution in a Year and a Day, it muſt be revived by *Scire facias*: And where any Judgment is obtained unduly, the Court will vacate it, and reſtore the Party damnified; if not puniſh the Offender. Action of Debt lies upon a Judgment, as well after a Writ of Error, as before: But if Debt is brought, the Plaintiff muſt have good Ground for his Action; tho' he may have Execution upon a voidable Judgment, and it ſhall ſtand good till reverſed. *Paſch.* 1656. 2 *Mod.* 127. 1 *Leon.* 82.

Four Days are allowed in *B. R.* to move in Arreſt of Judgment, and the Defendant hath all the Term wherein a Verdict was given to ſpeak any Thing to arreſt it, if the Plaintiff hath not given a four Days Rule, and ſigned his Judgment; afterwards 'tis too late, and he is put to his Writ of Error: Judgment may be ſtayed or arreſted for Want of Notice of Trial; where the Plaintiff before the Trial treated the Jury; if the Record differs from the Deed pleaded; or for ſome material Defect in Pleading, *&c.* But no Counſel ought to move in Arreſt

reſt of Judgment, except the Roll wherein the Judgment is entered be in Court: And here all Matters of Fact muſt be made out by Affidavit. Upon failing in Motion for a new Trial, there may be Motion for Arreſt of Judgment afterwards; but not for the former, after the latter. 1 *Inſt.* 259. 2 *Lill. Abr.* 93. 111.

By Statute, Judgments given ſhall continue 'till they are reverſed by Attaint or Error: And no Judgment ſhall be reverſed or annulled, by Reaſon of the Raſing or Interlining of any Record, Writ, Proceſs, *&c.* which may be reform'd by the Judges. Alſo Judgment ſhall be given after Iſſue tried, notwithſtanding any Jeofail or Miſpleading, *&c.* And after Verdict given in any Court of Record, there ſhall be no Stay of Judgment or Reverſal for Want of Form in a Writ, Count, Plaint, *&c.* or Want of any original Writ; or for inſufficient Returns of Sheriffs, *&c.* Stat. 4 *H.* 4. *c.* 23. 8 *H.* 6. 32 *H.* 8. *c.* 30. 18 *Eliz. c.* 14.

After Verdict in a Court of Record, Judgment ſhall not be ſtayed for any Variance in Form between the original Writ or Bill, and the Declaration, Plaint, *&c.* or for Want of Averment of the Parties being Living, ſo it be proved; or Miſnomer of Jurors; Want of Return of Writs, *&c.* Nor ſhall it be ſtayed or reverſed for not producing a Deed, or Letters of Adminiſtration, *&c.* or miſtaking the Chriſtian Name or Surname of either Party, Sum of Money, Day, Month or Year, being rightly named in any Record preceding, *&c.* But Writs and Suits of Appeal of Felony, *&c.* are excepted out of theſe Statutes. 21 *Jac.* 1. *c.* 13. 16 & 17 *Car.* 2. *c.* 8.

Where upon Demurrer in any Action, Judgment ſhall be given againſt the Plaintiff; or if after Judgment for the Defendant, the Plaintiff ſues a Writ of Error, and the Judgment ſhall be affirmed, *&c.* the Defendant ſhall have Judgment for Coſts, *&c.* All the Statutes of *Jeofails* ſhall extend to Judgments entered by Confeſſion, *Nil dicit*, or *Non ſum Informatus* entered in any Court of Record; and no Judgment to be reverſed, where it would be aided by thoſe Statutes. And after Verdict, Judgment ſhall not be ſtayed or reverſed by Reaſon of any Defect in Form or Subſtance, in any Bill or Writ, or for Variance therein, from the Declaration, *&c.* 8 & 9 *W.* 3. *c.* 11. 4 & 5 *Ann. c.* 16. 5 *Geo.* 1. *c.* 13.

A *Nonſuit* is where a Man brings an Action, and doth not appear and proſecute it with Effect, or upon Trial refuſeth to ſtand a Verdict; then he becomes nonſuited, which being recorded, the Defendant recovers his Coſts againſt him: And the Effect of a Nonſuit is to ſet the Matter at large; whereon the Plaintiff may commence his Action again, and proceed upon a New Declaration. Upon a Trial, when the Jury comes to deliver in their Verdict, and the Plaintiff is called upon to hear it; if he do not appear after thrice called by the Cryer of the Court, the Nonſuit is to be recorded by the Secondary, at the Prayer of the Defendant's Counſel: But where the Plaintiff appears, or his Attorney for him, he cannot be afterwards Nonſuit; but the Jury are to bring in their Verdict. *Mich.* 21 *Car. B. R.* 2 *Lill. Reg* 231.

The Nonſuit of the Plaintiff is commonly upon the Diſcovery of ſome Error or Defect, when the Matter is ſo far proceeded in, that the Jury are ready at the Bar to give in their Verdict: After a Demurrer join'd, if the Court gives a Day over, the Plaintiff may be nonſuit, for he is then demandable; and after Judgment *quod computet*, a Plaintiff may be nonſuited, this being but an interlocutory Judgment: Tho' after any Verdict, whereupon a final Judgment is to be given, he cannot. 1 *Inſt.* 140. 2 *H.* 4. *c.* 7.

On Nonſuit of the Plaintiff, *&c.* Coſts are given the Defendant, in all Caſes where the Plaintiff would have had Coſts: If the Plaintiff be nonſuited or overthrown by lawful Trial in any Action, Bill or Plaint for Treſpaſs upon the Statute 5 *R.* 2. or for any Debt, or Covenant, Contract, Detinue, Account upon the Caſe, or on any Statute, the Defendant ſhall have his Coſts; to be aſſeſſed by the Judges, and recovered as the Plaintiff might have recovered his, in Caſe Judgment had been given for him. Stat. 23 *H.* 8. *c.* 15. 4 *Jac.* 1. *c.* 3.

In Perſonal Actions brought in the Courts at *Weſtminſter*, (not being of Treſpaſs concerning Lands, or for Battery) when it ſhall appear to, and be ſignified by the Judges, that the Debt or Damages to be recovered amount not to the Sum of 40 *s.* or above, the Plaintiff ſhall have no more Coſts than Damages awarded; but may have leſs at the Diſcretion of the Court. The Judges are to certify, that a Battery is ſufficiently proved by the Plaintiff, to entitle to more Coſts than Damages, where the Damages

are

are under 40 *s.* And in all Actions of Treſpaſs, where the Treſpaſs is proved wilful and malicious, the Plaintiff ſhall recover Damages and full Coſts. 43 *Eliz. c.* 6. 23 *Car.* 2. *c.* 2. 8 & 9 *W.* 3. *c.* 11.

Coſts are allowed, not only on Nonſuits and Verdicts, but alſo upon putting off Trials, &c. tho' Coſts ought not to be paid for the putting a Trial off, where no Fault was in the Party againſt whom it is moved; for they are only to be paid by ſuch Perſons who by their Occaſion have cauſed the other Party to have been at extraordinary Charges: And Coſts are not given for unreaſonable Motions, only ſuch as the Party was neceſſarily put unto. 1 *Lill. Reg.* 335, 337. Attachment lies where Coſts are refuſed Payment; and when a Plaintiff is Nonſuit, Action of Debt may be brought for the Coſts; alſo the Defendant may have a *Capias ad Satisfaciendum* againſt him. 1 *Nelſ. Abr.* 550.

The Manner of Trials *in the Courts at* Weſtminſter, *and at the* Aſſizes.

IN order to trying of Cauſes in *London* or *Middleſex*, if the Defendant live not forty Miles from *London*, eight Days Notice of Trial is to be given; and where the Defendant lives that Diſtance or further, he muſt have fourteen Days Notice from the Plaintiff, before he tries his Cauſe: But eight Days Notice of Trial is good at the Aſſizes, let the Defendant live where he will, except on an old Iſſue; as where

a Cauſe hath remained four Terms without proceeding in it, in which Caſe a Term's Notice muſt be given. Upon due Notice, the Defendant is generally to go to Trial, or Judgment will paſs againſt him by Default; and if the Plaintiff doth not proceed to Trial after Notice, and there is no Countermand, the Defendant ſhall have Coſts for Attendance, &c. or a Defendant in ſuch Caſe may give Rule to try the Cauſe by *Proviſo*, and on Notice given the Plaintiff bring it to Trial, that he may diſcharge himſelf of the Action, and herein he may recover Coſts. 2 *Lill. Pract. Reg.* 609, 613. 23 *H.* 8. *c.* 15.

If a Defendant is not prepared to try his Cauſe, on Petition and Affidavit of the Reaſons, the Judge will order it to be ſtayed 'till another Day the ſame Aſſizes; or in *London* until the next Term, upon Payment of Coſts: And in Caſe at a Trial, the Court ſees that one of the Parties is ſurpriſed, by ſome Thing caſually happening, and not any Fault of his own, they may in their Diſcretion put off the Trial to another Time. And where the Matters conteſted are of great Value, or the Title in Queſtion is difficult or intricate, the Judges may be moved to order a Trial at Bar, for the better Satisfaction of the Parties; though theſe Trials are not uſually granted the ſame Term moved for, but the Term after, except Special Reaſons be given for it: Trials at Bar are appointed by the Statute of *Weſtm.* 2. 13 *Ed.* 1. where Cauſes require *Magnam Examinationem*; and Officers of the Court, and Barriſters at Law may inſiſt upon a Trial at Bar; after which

which no new Trial ſhall be allowed. 2 *Lill. Reg.* 609. 2 *Salk.* 648, 651, 653.

But new Trials may be granted in ſeveral Caſes; as when ſufficient Notice was not given the Defendant of the former Trial; if exceſſive Damages are aſſeſſed; a Verdict is given againſt Evidence; where there was any Fraud, *&c.* tho' it is a Rule, that a new Trial ſhall not be had for too ſmall Damages; unleſs Action of Covenant is brought for a Sum certain, and the Jury give Damages under the ſame, *&c.* And it ought not to be granted for Want of Evidence at a former Trial, which the Party might then have produced; or where the Defendant forgets to bring a Deed at the Trial, *&c.* And the Reaſon of granting new Trials upon Verdicts againſt Evidence at the Aſſizes, is becauſe the Trials are ſubordinate to the Courts. 2 *Salk. Rep.* 647, 648, 649.

In the Courts at *Weſtminſter* proceedings to Trial are as follows, *viz.* The Declaration being drawn, upon an Appearance made by the Defendant, it muſt be delivered with an Imparlance to the Defendant's Attorney; and then it is to be entered that Term on the Prothonotary's Roll and docquetted, and the Term following Rule muſt be given with the Secondary for the Defendant to plead by ſuch a Day, or the Plaintiff to have Judgment: The Defendant having pleaded to the Plaintiff's Action and Declaration, according to the Caſe, a Copy of the Iſſue is to be made and delivered the Defendant's Attorney, and Notice given him of Trial; preparatory to which, the *Venire facias* muſt be made out and returned by the Sheriff; after this, is ſued forth the *Habeas Corpora*, the

Record is made up, and the Parties go to Trial: But if the Defendant do not plead, but lets it go by Default, then on entering Judgment, a Writ of Inquiry of Damages ſhall be awarded, returnable the next Term, of the Execution whereof the Defendant's Attorney is to have Notice; which being executed, and the Damages inſerted in a Schedule annexed to the Writ returned by the Sheriff to the Prothonotary's Office, the ſame is to be taken out in the common Remembrance, and a Rule given upon it, when it muſt be carried to the Prothonotary, and he taxes Coſts; and laſtly, it is carried to the Clerk of the Judgments, who on giving him the Number Roll, and Term that the Judgment was entered, he will make out a Writ of Execution, either a *Capias ad Satisfaciendum*, or a *Fieri facias* for the Damages and Coſts, *&c.* And by a late Order of Court, the Plaintiff concluding to the Country, on the Plea of the Defendant, and Notice given of Trial in the Paper-Book, if the Defendant demurs, and the Plaintiff joins and obtains Judgment, the Defendant's Attorney is to accept of Notice of executing a Writ of Inquiry of Damages from the Time of Notice of Trial. *Ord. B. R. Paſch.* 6 *Geo.* 1.

At the *Aſſizes*, when a Cauſe comes on to Trial, firſt a *Diſtringas* of the Jury is to be return'd by the Sheriff, and then the Record muſt be delivered to the Judge's Marſhal; which being done, and Briefs before prepared to inſtruct the Counſel, (wherein the Caſe muſt be briefly but fully ſet forth, the Proofs placed in order, and proper Anſwers made to what may be objected on the other Side) and all

Parties

Parties ready, the Marſhal delivers the Record to the Judge, and the Jury being elected by Ballot, according to the late Act, the Cryer calls over their Names, and when they are ſworn, they are bid to ſtand together and hear their Charge: After which, the Counſel on both Sides open the Caſe, by declaring the Cauſe of the Suit, *&c.* firſt of the Side of the Plaintiff, the Proof lying on him, and looking over their Breviates argue the Matter in Conteſt, producing Witneſſes to prove the Facts alledged; in the mean Time, the Clerk of the Aſſize or his Aſſociate files the Writ, Panel and Record together, and makes a Copy of the Jury's Names, and of the Iſſue they are to try; and when the Counſel have done, and the Judge ſummed up the Evidence, he delivers it to the Jury, and a Bailiff being ſworn to keep them without Meat, Drink, *&c.* 'till they are agreed, they depart from the Bar; and when they are all agreed, they return to give in their Verdict: Then the Plaintiff is called, and if he doth not appear, a Nonſuit ſhall be recorded, and the Defendant is to pay the Jury and the Fees of the Court; but if the Plaintiff appears, the Clerk asks the Jury who they find for, and what Coſts and Damages, and ſo enters it on the Back of the Panel, and repeats it to the Jury, which finiſhes the Trial.

And after the Trial is over, the Aſſociate delivers to the Attorney for the Party recovering the Record with the *Diſtringas*, and the Names of the Jury annexed; on the Back whereof he writes the Subſtance of the Verdict, and the Coſts given by the Jury; and then upon the Back of the Record is ingroſſed the *Poſtea*, the

Purport of which is, That afterwards the Plaintiff and Defendant came by their Attornies before ſuch a Judge, and the Jury was elected and ſworn, &c. And found ſuch a Verdict, and ſo much Coſts, &c. And when the *Poſtea* is ingroſſed, it is to be carried to the Clerk of the *Poſteas* to be mark'd, for which a Fee of 4 *d.* is paid; then 'tis delivered to the Clerk of the Rules, and he makes out a Four-Days Rule for Judgment, having 1 *s.* 4 *d.* Fee; which Rule being out, if Judgment be not arreſted, the Record is to be ſtamp'd with a double 2 *s.* 6 *d.* ſtamp on the Back, and carried to the Maſter of the Office, who will tax further Coſts, and then the Judgment is fit to be entered: But in Trials at the *Aſſizes*, the Record and *Diſtringas* are uſually kept by the Aſſociate 'till the next Term, and he indorſes the *Poſtea* receiving his Fee for it at the Trial; and then he is to be called upon for the *Poſtea*, and you proceed to have it marked, make out a Rule, and ſign Judgment as above: And the Judgment muſt be entered on a Roll, in doing whereof Care is to be taken that no Error be committed. If a Trial be had the laſt Day of Term, or at the Sittings after the Term, or the Aſſizes, Judgment cannot be given thereon, until the firſt Day of the next Term: And Judgment being enter'd, Execution is awarded, and Writs of *Ca. Sa. Fieri fac. Elegit*, &c.

Form

Form of making up an *Iſſue* in a Cauſe.

Of Hillary-*Term, in the Seventh Year of the Reign of the Lord* George *the Second, King of* Great Britain, &c.

Wilts, ſſ. IT is to be remembred, That heretofore, that is to ſay, in *Michaelmas*-Term laſt paſt, came before the Lord the King at *Weſtminſter*, *A. B.* by *T. H.* his Attorney, and brought here into the Court of the ſaid Lord the now King, his Bill againſt *C. D.* in Cuſtody of the Marſhal, &c. of a Plea of Debt, &c. And there are Pledges of Proſecuting, to wit, *John Doe* and *Richard Roe*, which ſaid Bill follows in theſe Words: *Wilts, ſſ. A. B.* complains of *C. D.* being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Sovereign Lord the King, before the King himſelf, of a Plea that he render to him Twenty Pounds of lawful Money of *Great Britain*, which he owes to him, &c. (*and ſo go on with the Declaration to the End*).

And now at this Day, to wit, on *Tueſday* next after the *Octaves* of St. *Hillary* (the firſt Day of the Term that the Iſſue is entered) in this ſame Term, to which Day the ſaid *C.* had Leave to imparl, and then to anſwer, came as well the ſaid *A.* by his Attorney aforeſaid, as the ſaid *C.* by *J. B.* his Attorney; and the ſaid *C.* defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where the Court will pleaſe to conſider thereof; and

and ſaith, that he doth not owe to the ſaid *A.* the ſaid Sum of twenty Pounds, or any Part thereof, in Manner and Form as the ſaid *A.* hath above complained againſt him: And of this he puts himſelf upon his Country, and the ſaid *A.* doth likewiſe the ſame; therefore let there come Jurors thereof before our Lord the King at *Weſtminſter*, on *Monday* next after the *Octaves* of the Purification of the Bleſſed Virgin *Mary*, and who are neither in any wiſe related to the ſaid *A.* the Plaintiff, or to the ſaid *C.* the Defendant, to recognize and make a Jury of the Country between the ſaid Parties, becauſe as well the ſaid *A.* as the ſaid *C.* (between whom the Matter is in Variance) have therein ſubmitted themſelves to the Jury; the ſame Day is given to the ſaid Parties here, *&c.*

If the Declaration be of *Michaelmas*-Term, and the Plea of *Hillary*-Term, and the Iſſue is not delivered before *Trinity*-Term, then you make it an Iſſue of *Trinity*-Term, and ſay; and now here at this Day, that is to ſay, on *Monday* next after the Morrow of the *Holy Trinity*, *&c.* And if the General Iſſue be *Not guilty* in *Treſpaſs*, then after when, *&c.* ſay, and ſaith, That he is no wiſe guilty of the Premiſſes above charged on him, as the ſaid *A.* above complains againſt him: *And of this he puts himſelf on the Country, and the ſaid* C. *doth likewiſe*, &c. On *Non Aſſumpſit*, and ſaith, that he did not undertake in ſuch Manner and Form as the ſaid *A.* hath above complained againſt him. And on *Non eſt factum*, and ſaith, That he ought not to be charged with the ſaid Debt by Virtue of the ſaid Bond, or Writing obligatory, becauſe he

he ſaith, the ſaid Bond is not his Deed; and of this, &c.

When the Iſſue is joined the ſame Term the Declaration is of, it is entered thus: Be it remembred, That ſuch a Day, &c. in this ſame Term, came before the Lord the King at *Weſtminſter*, *A. B.* by, &c. his Attorney, and brought here into the Court of the ſaid Lord the King his certain Bill againſt *C. D.* in Cuſtody of the Marſhal, &c. (Here the Plea follows without an Imparlance). And where the Declaration is above four Terms ſtanding, you ſay, It is to be remembred, That heretofore in the Term of, &c. in the third Year of the Reign, &c.

A Record *of* Niſi prius *is made up thus:*

Pleas before the Lord the King at Weſtminſter *of* Hillary-*Term in the Seventh Year of the Reign of our Sovereign Lord* George *the Second, King of* Great Britain, France *and* Ireland, *Defender of the Faith*, &c.

Wilts, ſſ. IT is to be remembered, That heretofore, to wit, in the Term of St. *Michael* laſt paſt, came before the Lord the King at *Weſtminſter*, *A. B.* by his Attorney, &c. and brought here into the Court, &c. (as above to the End of the Iſſue.) Then leaving about half an Inch ſpace, begin another *Placita*, the ſame with the former, unleſs the Trial of the Cauſe is put off to another Term than that which the *Placita* is of; for in ſuch Caſe, it muſt be of the ſame Term that the Cauſe is tried

tried in: And in the firſt *Placita* muſt be mentioned the Term the Iſſue is joined; and in the Second, the Term in which it is to be tried, *&c.* Afterwards in a new Line, the *Jurata* is entered; and then you muſt take out your *Venire facias* on this Iſſue and Record, for the Sheriff to impanel a Jury: Upon which there iſſues a *Diſtringas Juratores*, and *Subpœna's* for Witneſſes, in order to Trial, *&c.*

A Jurata *for a Cauſe to be tried in* London.

London. THE Jury between *A. B.* by his Attorney, Plaintiff, and *C. D.* of a Plea of Debt, *&c.* are reſpited before our Sovereign Lord the King at *Weſtminſter*, until *Friday* next after the *Octaves* of St. *Martin*, unleſs his Majeſty's Faithful and Well-beloved *Philip* Lord *Hardwick*, his ſaid Majeſty's Chief Juſtice aſſign'd to hold Pleas in his Majeſty's Court, before the ſaid King himſelf, ſhall come before at *Guildhall*, *London*, on *Thurſday* next after the *Octaves* of St. *Martin*, (or if it be at the Sittings after Term, then you ſay, on *Thurſday* the thirtieth Day of *November*) according to the Form of the Statute in that Caſe made and provided: Therefore let the Sheriffs have their Bodies, *&c.* The ſame Day is given to the ſaid Parties there; and be it known, that his Majeſty's Writ for that Purpoſe, on the Day, *&c.* this ſame Term before the Lord the King at *Weſtminſter*, is to be delivered of Record to the Deputy-Sheriff of *London*, to be executed in due Form of Law, under a Peril attending the Neglect thereof.

If

If the Jurata *be in* Middlesex, *then say:*

Unless his said Majesty's faithful and well-beloved *Philip* Lord *Hardwick*, his Majesty's Chief Justice, assigned to hold Pleas in the Court of our said Lord the King, before the King himself at *Westminster* in the said County of *Middlesex*, in the Great Hall of Pleas, shall come before, *&c.* according to the Form of the Statute, *&c.*

A Jurata *for a Trial at the* Assizes.

Unless before that Time, his present Majesty's Justices, appointed to hold the *Assizes* in the said County, on the Day, *&c.* at the Town of, *&c.* according to the Form of the Statute in such Case made and provided, shall first come for Default of Jurors; therefore let the Sheriff have their Bodies, *&c.* And be it known that the Writ thereof, on the Day, *&c.* is delivered of Record to the Deputy-Sheriff of the County aforesaid, in Form of Law to be executed, *&c.*

A Writ of Venire facias.

GEORGE the Second, *&c.* To the Sheriffs of *L.* Greeting: We command you, that you cause to come before us at *Westminster*, *&c.* on *Wednesday* next after three Weeks from the *Holy Trinity*, Twelve free and lawful Men of

of the Body of your County (every one of which to have Ten Pounds a Year, at leaſt, of Lands, Tenements or Rents) by whom the Truth of the Matter will be the better known; and who are in no wiſe related either to *A. B.* the Plaintiff, or to *C. D.* the Defendant, to make a Jury between the Parties aforeſaid, in an Action of Debt, *&c.* becauſe as well the ſame *C. D.* as the ſaid *A. B.* between whom the Conteſt is, have thereof ſubmitted themſelves to the Jury; and have you there the Names of the Jury and this Writ. *Witneſs Philip* Lord *Hardwick* at *Weſtminſter*, the Day, *&c.* in the Year of the Reign, *&c.*

A Writ of Diſtringas Jurator'.

GEORGE the Second, *&c.* To the Sheriff of *W.* Greeting: We command you, that you diſtrain the ſeveral Perſons mentioned in the Panel hereto annexed, Jurors ſummoned in our Court before us, between *A. B.* Plaintiff, and *C. D.* by all their Lands and Chattels in your Bailiwick; ſo that neither they, nor any of them, or any one of them, meddle therewith until you have another Precept from us, and that you Anſwer for the Iſſues of the ſame to us, ſo as you have their Bodies before us at *Weſtminſter*, on the Day, *&c.* or before our beloved and faithful *Philip* Lord *Hardwick*, our Chief Juſtice aſſigned to hold Pleas in our Court before us, (if he ſhall come before that Time, that is to ſay, on, *&c.* at *Guildhall*, *&c.* by Force of the Statute in ſuch Caſe made and provided) to make

a Jury of the County, between the ſaid Parties, in an Action of Debt, &c. and hear their Judgment for their many Defaults; and have you then there the Names of that Jury, and this Writ. *Witneſs*, &c.

A Writ of Subpœna *for Witneſſes.*

GEORGE the Second, &c. To *E. F. G. H.* and *J. K.* &c. We command you, and every of you, firmly enjoining you, that laying aſide all and all Manner of Buſineſſes and Excuſes whatſoever, you and every of you be before our faithful and well-beloved *Philip* Lord *Hardwick*, our Chief Juſtice appointed to hold Pleas in our Court before us, on the Day of, &c. next following, at *Guildhall*, *London*; or at *Weſtminſter* in the Great Hall of Pleas there, &c. (or, you and every of you be in your proper Perſons before our Juſtices at the *Aſſizes* appointed to be held in the County of *S.* on the Day, &c. next following, at, &c. in the County aforeſaid) to teſtify all and ſingular thoſe Things, which you or either of you ſhall know, in a certain Matter of Controverſy now depending and undetermined in our Court before us, between *A. B.* Plaintiff and *C. D.* Defendant, in an Action of Treſpaſs upon the Caſe, &c. And on that Day to be tried by a Jury of the Country; and this do you and every of you by no means omit, under the Penalty of One hundred Pounds for every of you. Witneſs *Philip* Lord *Hardwick*, &c.

A Sub-

A Subpœna Ticket *for Witneſſes to appear.*

Mr. *E. F.*

BY Virtue of a Writ of *Subpœna* to you directed, and herewith ſhewn unto you, you are perſonally to be and appear before *Philip* Lord *Hardwick* Chief Juſtice, *&c.* or before his Majeſty's Juſtices of Aſſize, on the Day of, *&c.* next, being the Day, *&c.* at Ten of the Clock in the Forenoon of the ſame Day, at the Court then to be holden at, *&c.* in the County of, *&c.* to teſtify the Truth, according to your Knowledge, in a certain Cauſe now depending, and then and there to be tried between *A. B.* Plaintiff, and *C. D.* Defendant, in an Action of, *&c.* on the Part of the Plaintiff; and hereof you are not to fail on Pain of One hundred Pounds. Dated the Day, *&c.* in the Seventh Year of the Reign of the Lord *George* the Second, King of *Great Britain*, *&c.* and in the Year of our Lord 1733.

A Poſtea *on a Trial at the Aſſizes.*

AFterwards, that is to ſay, on the Day, and at the Place within contained, as well the within named *A. B.* as the within written *C. D.* by their ſaid Attornies within mentioned, came before Sir *Robert Eyre*, Knt. his Majeſty's Chief Juſtice of his Court of Common Pleas, and *R. J.* Eſq; aſſociated for this particular Purpoſe to the ſaid Sir *R. E.* and *Alexander Denton*, Eſq; another of his Majeſty's Juſtices of his ſaid

Court of Common Pleas, appointed to hold the Aſſizes in the County of *S.* by Virtue of his Majeſty's Writ, directing the ſaid Aſſizes to be held before any Two of the Perſons therein named, if all of them ſhould not come there, (the Preſence of the ſaid *Alexander Denton* not being expected); and the Jury being ſummoned and ballotted, according to the Form of the Statute in ſuch Caſe made and provided, and tried and ſworn to declare the Truth of what is within contained, declare upon their Oath, that the Writing obligatory in the Plaintiff's Declaration within mentioned, is the Deed of the ſaid *C. D.* as the ſaid *A. B.* hath within declared againſt him; and they aſſeſs the Damages of the ſaid *A.* on that Occaſion, beſides his Expences and Coſts by him laid out about his Suit in this Particular, to one Shilling, and for his Expences and Coſts, to fifty-three Shillings and four Pence: Therefore it is conſider'd, that the ſaid *A.* do recover againſt the ſaid *C.* his ſaid Debt, and the Damages aſſeſſed by the ſaid Jury by Reaſon of Detaining the ſame, and Fourteen Pounds for his Expences and Coſts awarded by this Court to the ſaid *A.* with his Conſent, by Way of Increaſe; which ſaid Damages in the Whole amount to Sixteen Pounds fourteen Shillings and four Pence; and be the ſaid *C.* amerced, *&c.*

A Poſtea *where the Defendant makes Default.*

AFterwards, that is to ſay, on the Day and at the Place within mentioned, before the with-

in written *P.* Lord *H.* (there being aſſociated unto him, *&c.* according to the Form of the Statute in that Caſe made and provided) came the within written *A. B.* by his Attorney within contained, and the within-named *C. D.* altho' ſolemnly required, comes not, but hath made Default; therefore let the Jury, whereof Mention is made, be accepted of againſt him thro' his Default: And the Jurors of that Jury being ſummoned, ſome of them, that is to ſay, *L. M. N. P. R. S. &c.* come, and being ballotted according to the Form of the Statute, are ſworn upon that Jury; and becauſe the Reſidue of the Jurors of the ſame Jury do not appear; therefore other Perſons ſtanding by the Court, are at the Requeſt of the ſaid *A.* and by the Command of the ſaid Juſtices, elected by the Sheriff of the ſaid County, and newly added; the Names of which are affiled in the Panel within written, according to the Form of the Statute in ſuch Caſe made and provided; which ſaid Jurors ſo newly added, that is to ſay, *T. U. W. Y. &c.* being required, likewiſe came, who being elected, tried and ſworn, together with the ſaid other Jurors, before ballotted, impanelled, and ſworn to declare the Truth of what is within contained, ſay upon their Oath, that the ſaid *C.* did undertake or promiſe, *&c.* in Manner and Form as the ſaid *A.* hath within complained againſt him; and they aſſeſs the Damages of the ſaid *A.* by Reaſon of not performing the Promiſes and Undertakings within written, beſides his Expences and Coſts laid out by him about his proſecuting this Cauſe, to Sixty Pounds, and for his Expences and Coſts Fifty Shillings; therefore it is adjudged, *&c.*

A Continuance *of a* Poſtea *at the* Aſſizes.

AFterwards continued thereof Proceſs between the Parties aforeſaid, of the Plea or Action aforeſaid, by the Jury put thereof between them, in Reſpite before the Lord the King at *Weſtminſter*, until *Monday* next after the *Octaves* of the Purification of the Bleſſed Virgin *Mary* from thence next following; unleſs the Juſtices of the Lord the King appointed to hold the *Aſſizes* in the County aforeſaid, ſhall on the Day of, *&c.* at *S.* in the County aforeſaid, according to the Form of the Statute, *&c.* come for Default of Jurors, *&c.* At which Day, before the Lord the King at *Weſtminſter*, came the aforeſaid *A. B.* by his Attorney aforeſaid, and the aforeſaid Juſtices of the Lord the King at the Aſſizes, before whom, *&c.* ſent here their Record before them had in theſe Words, to wit; afterwards at the Day and Place, *&c.* as before unto; therefore, *&c.*

A Verdict *in Debt, on an Iſſue of Covenants perform'd*, &c.

THE Jurors, *&c.* being elected, tried and ſworn, to declare the Truth, *&c.* ſay upon their Oath, that the ſaid *C. D.* did not pay to the ſaid *A. B.* on the within written Day of, *&c.* which was in the Year of our Lord, *&c.* according to the Covenant or Condition of the Deed within mentioned, the aforeſaid One hundred Pounds, which he ought to have paid to the ſaid *A.* at or upon the ſaid Day, according

to the Form and Effect of the ſaid Covenant, in Manner as the ſaid *C.* hath by his Pleading alledged; and they aſſeſs the Damages of the ſaid *A.* on that Occaſion, beſides his Expences and Coſts by him about his Suit in that Caſe laid out and expended, to, *&c.* and for thoſe Expences and Coſts to Fifty-three Shillings and four Pence; therefore, *&c.*

A Verdict *upon an Iſſue on* Plene Adminiſtravit, *for the Plaintiff.*

Say upon their Oath, That the ſaid *C.* hath, and at the Day of exhibiting the within written Bill of the ſaid *A.* that is to ſay, on the Day of, *&c.* in the Year 1733, had divers Goods and Chattels in his Hands unadminiſtred, which were of the within named *E.* at the Time of his Death, to the Value of the Debt within ſpecified, whereof he might have made Satisfaction to the ſaid *A.* for his ſaid Debt, that is to ſay, at *T.* in the County aforeſaid; and they aſſeſs the Damages of the ſaid *A.* by Reaſon thereof, beſides his Expences and Coſts laid out by him about his Suit in this Behalf, to Two Pence, and for his Expences and Coſts to Forty Shillings; therefore, *&c.*

The like Verdict *in Caſe, and* Judgment *on ſuch an Iſſue.*

Say upon their Oath, that the ſaid *C. D.* on ſuch a Day and Year, had divers Goods and Chattels, which were the Property of the within named *E. F.* at the Time of his Death, in the Hands

Hands of him the ſaid *C.* to be adminiſtred, to the Value of the ſaid Fifty Pounds in the Declaration within ſpecified, in Manner and Form as the ſaid *A. B.* hath againſt him complained, *&c.* And they aſſeſs the Damages of the ſaid *A.* by Occaſion of the not performing of the Promiſe and Aſſumption within mentioned, beſides his Charges and Coſts by him about his Suit in this Particular expended, to, *&c.* and for his Charges, *&c.* Therefore it is conſidered, that the ſaid *A.* ſhall recover againſt the ſaid *C.* his Damages aforeſaid, aſſeſſed by the Jury aforeſaid, in Form aforeſaid; and alſo fifteen Pounds and ten Shillings for his Charges and Coſts of Increaſe by the Court of the Lord the King here adjudged to the ſaid *A.* by his Aſſent, which ſaid Damages do in the Whole amount to, *&c.* to be levied of the Goods and Chattels which were of the within named *E. F.* in the Hands of the ſaid *C.* unadminiſtred, *&c.*

A Verdict *for the Defendant upon* Plene Adminiſtravit.

Say upon their Oath, That the within mentioned *C.* at the Time of exhibiting the Bill of the ſaid *A.* within contained, hath fully adminiſtred all the Goods and Chattels in his Hands which were of the ſaid *E.* at the Time of his Death; and that he the ſaid *C.* hath not, nor at the Day of exhibiting the within ſpecified Bill, or at any Time afterwards, had any Goods or Chattels in his Hands unadminiſtred, which were of the ſaid *E.* at the Time of his Death, wherewith he could pay the within mentioned

Debt, or any Part thereof, to the ſaid *A.* as he the ſaid *C.* in his within Plea hath alledged by Way of Defence; therefore, *&c.*

A Verdict *in Treſpaſs, upon Not guilty.*

Say upon their Oath, that the ſaid *C. D.* is guilty of the Treſpaſs, *&c.* within written, in ſuch Manner and Form as the ſaid *A. B.* doth within complain againſt him; and they aſſeſs the Damages of the ſaid *A.* by Reaſon thereof, beſides his Expences and Coſts laid out by him about his Suit in this Behalf to Twelve Pence, and for his Expences and Coſts to forty-three Shillings and four Pence, *&c.*

A Verdict *in Aſſault and Falſe Impriſonment, on ſeveral Iſſues.*

AS to the Iſſue joined between the ſaid *A. B.* and *C. D.* they ſay upon their Oath, that the ſaid *C.* is not Guilty of the Premiſſes within charged upon him, as the ſaid *C.* hath within alledged in making his Defence thereto: And as to the firſt Iſſue joined between the ſaid *A.* and the ſaid *E.* (that is to ſay) as to the coming with Force and Arms, and whatſoever elſe that is againſt the Peace of our Sovereign Lord the King that now is; and alſo as to the whole Treſpaſs within mentioned, except the Aſſaulting, Beating, Ill-treating, Taking and Impriſoning, and in Priſon detaining and keeping of the ſaid *A.* by the Space of eight Hours within mentioned, *&c.* the ſaid Jury upon

on their Oath further ſay, that the ſaid *E.* is guilty thereof in Manner and Form as the ſaid *A.* within complains againſt him: And as to the ſecond Iſſue within mentioned, joined between the ſaid *A.* and the ſaid *E.* (that is to ſay) as to the Aſſaulting, Beating, Ill-treating, Taking and Impriſoning, and in Priſon detaining of the ſaid *A.* by the Space of eight Hours, the ſaid Jury ſay upon their Oath, that the ſaid *E.* the Day and Year ſpecified in the Declaration within written, of his own proper Injury, without any ſuch Cauſe as by him the ſaid *E.* is within alledged in his Plea, in the Pariſh of, *&c.* in the within ſpecified County, made an Aſſault upon the ſaid *A.* and beat, ill-treated, took, impriſoned, and in Priſon there detained and kept the ſaid *A.* in ſuch Manner and Form as the ſaid *A.* hath within complained againſt him; and they aſſeſs the Damages of the ſaid *A.* by Reaſon thereof, beſides his Expences and Coſts expended by him about his Suit in this Cauſe, to forty Shillings, and for his Expences and Coſts to twenty Shillings; therefore, *&c.*

Judgments *are entered in the following Manner:*

In the Entring of Judgment, a Margin muſt be allowed in the Side of the *Rolls*, of about two Fingers Breadth, then begin about a Span from the Top, in a large ſet Hand; and about a Thumb's Breadth beneath enter the Warrants of Attorney: And then in a new Line begin your Record, *&c.* and enter the Judgments in Form thus, *viz.*

Alſo of this Term of St. *Hillary*, (*or as the Term is*) Witneſs *Philip* Lord *Hardwick*.

London. A. B. *appoints in his Stead* T. H. *his Attorney againſt* C. D. (if there is an *al. dict.* ſay) *otherwiſe called*, &c. *in an Action of Debt*, &c.

London, to wit, IT is to be remembered, &c. (*here recite the whole Record till you come to the End of the Iſſue*), Afterwards the Proceſs thereof between the Parties aforeſaid, was continued of the Plea or Action aforeſaid; and the Jury aforeſaid impanelled between them thereupon, are reſpited before the Lord the King at *Weſtminſter*, until the Day, &c. (*as it is in the* Jurat. *of the Record*) Unleſs his Majeſty's Faithful and well-beloved *P.* Lord *H.* the Chief Juſtice of the ſaid Lord the King, aſſigned to hold Pleas in the Court of our ſaid Lord the King, before the King himſelf, ſhall before ſuch a Day, &c. come to the *Guildhall*, *London*, according to the Form of the Statute, for Default of Jurors, &c. At which Day came before the Lord the King at *Weſtminſter*, the aforeſaid *A. B.* by his Attorney aforeſaid; and the aforeſaid Chief Juſtice, before whom, &c. ſent hither his Record before him had, in theſe Words, that is to ſay; Afterwards at ſuch a Day and Place, &c. (*reciting the whole* Poſtea verbatim), *Therefore it is conſidered*, that the aforeſaid *A. B.* ſhall recover againſt the aforeſaid *C. D.* his Debt afore-

aforeſaid, and his Damages, aſſeſſed by the Jury aforeſaid, in Form aforeſaid; and alſo Seven Pounds thirteen and four Pence, (the Coſts taxed by the Maſter) for his Charges and Coſts aforeſaid, by the Court of the ſaid Lord the King now here, adjudg'd of Increaſe to the ſaid *A. B.* by his Aſſent, which ſaid Damages do in the Whole amount to, *&c.* And be the ſaid *C. D.* in Mercy, *&c.* (*and ſo write* Mercy *or* amerced *in the Margin.*) But in Ejectment, and Treſpaſs, and on *Non eſt factum* pleaded, inſtead thereof you muſt ſay; *and let the ſaid* C. D. *be taken*, &c.

Thus is your Judgment entered and finiſhed, and a good Space muſt be left between the ſeveral Judgments on the Roll for entering *Committiturs*, (when a Defendant is committed to the *King's Bench* Priſon) and alſo to enter Satisfaction acknowledged on the Record, and for other Purpoſes: The ſame Method may be uſed for entering of Judgments on Verdicts at the *Aſſizes*; and you may enter the Iſſues and Judgments on both Sides of the Roll, ſo as not to write too near the Bottom on the Foreſide, becauſe within an Inch thereof and where the Roll is of full Breadth, you are to write the Number of the Roll and the Chief Clerk's Name in large Hand and Figures.

Roll CXX.

Ventris.

A Judg-

A Judgment *by* Nil dicit *in Debt, without Trial.*

AND now here at this Day, to wit, on *Wedneſday* next after three Weeks from the Day of St. *Michael* this ſame Term, until which Day the ſaid *C. D.* had Leave to imparl and then to anſwer, came before the Lord the King at *Weſtminſter*, *A. B.* by his Attorney aforeſaid, and the ſaid *C. D.* altho' ſolemnly required, came not, nor doth he ſay any Thing in Bar or Preclusion of the ſaid Action of the ſaid *A.* whereby the ſaid *A.* remains thereof undefended by the ſaid *C.* Therefore it is conſidered, that the ſaid *A.* do recover againſt the ſaid *C.* his Debt aforeſaid, and alſo Thirty-three Shillings and four Pence, as well for his Damages occaſioned by the Detaining of his ſaid Debt, as for his Expences and Coſts laid out by him about his Suit in this Behalf, awarded by this Court to the ſaid *A.* with his Conſent; and be the ſaid *A.* amerced, *&c.*

Such a Judgment *in Caſe, the ſame Term.*

AND the ſaid *C. D.* by, *&c.* his Attorney, comes and defends the Force and Injury when, *&c.* And the ſaid *A. B.* prays, that the ſaid *C.* may anſwer to the ſaid Declaration of him the ſaid *A.* whereupon the ſaid *C.* hath 'till, *&c.* (the laſt Day of Term) given to him, by the Court of the Lord the King here, to anſwer to the ſaid Bill of the ſaid *A.* And the ſaid *C.* altho'

altho' ſolemnly required to anſwer thereto, came not, nor doth the ſaid *C.* ſay any Thing in Bar or Denial of the ſaid Action of the ſaid *A.* whereby the ſaid *A.* remains therein undefended by the ſaid *C.* For which Cauſe the ſaid *A.* ought to recover againſt the ſaid *C.* his Damages ſuſtained by him by Reaſon of the Premiſſes; but becauſe the Court of the ſaid Lord the King now here, know not what Damages the ſaid *A.* hath ſuſtain'd in this Suit by Occaſion of the Premiſſes; therefore the Sheriff is commanded that he diligently inquire, by the Oaths of Twelve honeſt and lawful Men of his Bailiwick, what Damages he the ſaid *A.* hath ſuſtained, as well by Reaſon of the Premiſſes, as for his Expences and Coſts laid out by him about his Suit in this Cauſe; and that he ſend the ſaid Inquiſition, which he ſhall take thereon, to our Sovereign Lord the King at *Weſtminſter*, on *Wedneſday* next after Three Weeks of St. *Michael*, under his Seal, and the Seals of thoſe by whoſe Oaths he ſhall take ſuch Inquiſition, together with the Writ of the ſaid Lord the King to him thereof directed: The ſame Day is given to the ſaid *A.* there, *&c.*

A Judgment *by* Non ſum Informatus *in* *Debt.*

AND the ſaid *C.* by *J. B.* his Attorney, comes and defends the Force and Injury, when, *&c.* and the ſaid *A.* prays that the ſaid *C.* may anſwer to his the ſaid *A.*'s Declaration; whereupon the ſaid Attorney ſays, that he is not inſtructed by the ſaid *C.* his Client, to give any Anſwer

Anſwer for him to the ſaid *A.* in the Premiſſes, nor doth he ſay any Thing in Bar or Denial of the ſaid *A.*'s Action; whereby the ſaid *A.* remains thereof undefended by the ſaid *C.* Therefore it is adjudged, that the ſaid *A.* do recover againſt the ſaid *C.* his ſaid Debt, and alſo, *&c.* for his Damages occaſioned by the Detaining thereof, and for his Expences and Coſts, *&c.*

A Judgment *by* Cognovit actionem.

AND the ſaid *C.* by, *&c.* his Attorney, comes and defends the Force and Injury, *&c.* and ſays, that he cannot deny the Action of the ſaid *A.* nor but that he owes to the ſaid *A.* the ſaid Fifteen Pounds and ten Shillings, *&c.* in ſuch Manner and Form as the ſaid *A.* above complains againſt him; therefore it is adjudged, that the ſaid *A.* do recover againſt the ſaid *C.* his ſaid Debt, and alſo (the Money taxed for the Coſts) for his Damages which he hath ſuſtained as well by Occaſion of the Detaining of the ſaid Debt, as for his Expences and Coſts awarded by this Court to the ſaid *A.* with his Conſent; and be the ſaid *C.* amerced, *&c.* ——— If the *Judgment* be *in Caſe* on a Promiſe; and ſaith, that he cannot deny the ſaid Action of the ſaid *A.* nor but that he the ſaid *C.* undertook, or made ſuch Promiſe, in ſuch Manner and Form as the ſaid *A.* hath above thereof complained againſt him, nor alſo but that the ſaid *A.* hath ſuſtained Damages by Reaſon of the Non-performance of the ſaid Promiſes and Undertakings to Fifty Pounds, as he the ſaid *A.* hath above ſuppoſed in his Declaration; and thereupon the ſaid *A.* prays

prays that the Damages ſo acknowledged, together with his Expences and Coſts laid out by him about his Suit in that Cauſe, may be awarded to him: Therefore it is adjudged, that the ſaid *A.* do recover againſt the ſaid *C.* his ſaid Damages above acknowledged to Fifty Pounds, and alſo Six Pounds for his Expences and Coſts awarded by the Court of our ſaid Lord the King, now here to the ſaid *A.* by his Conſent, which ſaid Damages in the whole amount to Fifty-ſix Pounds; and the ſaid *C.* be amerced, *&c.*

Entry of a Judgment *on a* Remittitur dampna, *after a Writ of Inquiry.*

AT which Day came here the ſaid *A. B.* by his ſaid Attorney, and the Sheriffs, to wit, Sir *J. B.* Knt. and *M. P.* Eſq; have ſent here a certain Inquiſition, taken before them at the *Guildhall* of the ſaid City of *London*, ſituate in the Pariſh of St. *Lawrence* in the *Old Jewry* in the Ward of *Cheap* of the ſame City, on the Day of, *&c.* laſt paſt, by the Oaths of Twelve, *&c.* by which it is found that the ſaid *A. B.* ſuſtained Six Pence Damages, by Reaſon of the not performing of the firſt and ſecond Promiſes, beſides his Expences and Coſts laid out by him about his Suit in this Cauſe; and alſo Seventy-five Pounds ſix Shillings and eight Pence Damages, occaſioned by Reaſon of the Non-performance of the laſt mentioned Promiſe, beſides his Expences and Coſts laid out by him, *&c.* and for his Expences and Coſts Twenty-ſeven Shil-

Shillings and four Pence: And thereupon the ſaid *A.* doth here *gratis* in Court remit to the ſaid *C.* the ſaid Six Pence found by the ſaid Inquiſition upon the ſaid firſt and ſecond Promiſes, in the Manner as above, and the Expences and Coſts laid out in that Particular; and he prays Judgment againſt the ſaid *C.* for the ſaid Seventy-five Pounds ſix Shillings and eight Pence, Reſidue of the ſaid Damages, and for the ſaid Twenty-ſeven Shillings and four Pence the ſaid Expences and Coſts found by the ſaid Inquiſition, in the Manner aforeſaid, and the Increaſe thereof to be awarded to him, *&c.* Therefore the ſaid Six Pence being remitted, deducted and abated, it is adjudged that the ſaid *A.* do recover againſt the ſaid *C.* the ſaid Seventy-five Pounds, *&c.* occaſion'd by the Non-performance of the ſaid laſt mentioned Promiſe, and Twenty-ſeven Shillings and four Pence for the Expences and Coſts, likewiſe found by the ſaid Inquiſition, in Manner aforeſaid, and alſo Seven Pounds and four Shillings awarded by this Court to the ſaid *A.* at his Requeſt, for his Expences and Coſts by Way of Increaſe; which ſaid Damages amount in the Whole to Eighty-three Pounds and eighteen Shillings; and be the ſaid *C.* amerced, *&c.* And the ſaid *C.* is acquitted of the ſaid ſix Pence deducted in the Manner aforeſaid, *&c.*

Entry of Satisfaction acknowledged *on Record.*

AFter the Entry of the Judgment, you go on thus: Afterwards, that is to ſay, on *Friday* next after Three Weeks from the Day of the *Holy Trinity*, came the ſaid *A. B.* by *T. H.* his Attorney, before our Sovereign Lord the King at *Weſtminſter*, and acknowledged himſelf to have had Reſtitution and Satisfaction from the ſaid *C. D.* of all Sums of Money which he the ſaid *A. B.* hath been deprived of by Occaſion of the ſaid Judgment: Therefore be the ſaid *C. D.* for ever acquitted of all ſuch Sums of Money, *&c.*

Docquets *of Entries by the Attornies of* B. R.

THE Entries of *T. H.* Gentleman, one of the Attornies of the Court of the Lord the King, before the King himſelf, *&c.* (or one of the Clerks of *Edward Ventris* Eſq; Chief Clerk of the Lord the King, *&c.*) of *Trinity-Term* in the Seventh Year of the Reign of *George* the Second, now King of *Great Britain*, *&c.*

South'ton, ff. He owes nothing in Debt for 100 *l.* on Bond, between *A. B.* Plaintiff, and *C. D.* Defendant, and for 40 *s.* for Damages and Coſts. } Roll the 20th.

Wilts,

Wilts, ſſ. Says nothing in Debt, upon an Obligation between *A. B.* Aſſignee of, &c. late Sheriff of the County aforeſaid Plaintiff, and *C. D.* otherwiſe called *C. D.* of, &c. in the County of *S.* Gent. Defendant, as well for 200 *l.* Debt, as 46 *s.* for Coſts. } Roll the 97th.

Somerſet, ſſ. Not inform'd in Debt, on Money lent, between *C. D.* Plaintiff, and *E. F.* Defendant, for 500 *l.* Debt, and 63 *s.* Coſts. } Roll the 106th.

Dorſet, ſſ. Not guilty in Treſpaſs, between *A. B.* Plaintiff and *C. D.* Defendant, &c. } Roll the 78th.

The Record of a Cauſe *in Action of the Caſe, with a* Writ of Inquiry, *and* Judgment *on Demurrer.*

Of Michaelmas-*Term in the Sixth Year of* George *the Second, now King of* Great Britain, &c. } Roll the 100th.

London, ſſ. IT is to be remembred, that heretofore, to wit, in *Trinity-Term* laſt

laſt paſt, *A. B.* by *T. H.* his Attorney, came before the Lord the King at *Weſtminſter*, and brought into the Court of the ſaid Lord the King, his Bill againſt *C. D.* in the Cuſtody of the Marſhal, &c. of a Plea of Treſpaſs on the Caſe, and there are Pledges of Proſecuting, to wit, *John Doe* and *Richard Roe*, which ſaid Bill follows in theſe Words: *London*, ſſ. *A. B.* complains of *C. D.* in Cuſtody of the Marſhal of the *Marſhalſea* of the Lord the King being, before the King himſelf; for that whereas the ſaid *C.* after the Firſt Day of *May* in the Year of our Lord One Thouſand ſeven Hundred and Thirteen, at *London* aforeſaid, to wit, in the Pariſh of the Bleſſed *Mary* of the Arches, in the Ward of *Cheap*, made his certain Note in Writing, called a Promiſſory Note, ſubſcribed with his own proper Hand, bearing Date the Day and Year, &c. aforeſaid, and then and there delivered the ſaid Note to the ſaid *A.* by which ſaid Note, he the ſaid *C.* promiſed to pay to the ſaid *A.* or his Order, Fifty-five Pounds, within three Months after the Date of that Note, for Value received; and the ſaid *A.* in fact ſaith, that he the ſaid *A.* at any Time hitherto, hath not ordered the aforeſaid Fifty-five Pounds contained in the Note aforeſaid, to be paid to any other Perſon whatſoever: By Reaſon of which ſaid Premiſſes, and alſo by Force of the Statute in this Caſe lately made and provided, the ſaid *C.* was chargeable, and yet is chargeable to pay to the ſaid *A.* the aforeſaid Fifty-five Pounds in the ſaid Note contained; and being ſo chargeable, the ſaid *C.* in Conſideration thereof, afterwards, to wit, the ſame Day and Year laſt above-mentioned, at *L.*

aforeſaid, in the Pariſh and Ward aforeſaid, took upon himſelf, and the ſaid *A.* then and there faithfully promiſed to pay to him the ſaid *A.* the aforeſaid Fifty-five Pounds, according to the Tenor of the ſaid Note: *And alſo* whereas afterwards, to wit, the ſame Day and Year laſt above-mentioned, at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, the ſaid *A.* and *C.* accounted together of and concerning divers Sums of Money to the ſame *A.* by the ſaid *C.* before that Time due, and then being in Arrear and unpaid; and upon that Account, the ſaid *C.* was then and there found in Arrearage towards the ſaid *A.* in other Fifty-five Pounds of lawful Money of *Great Britain*, and being ſo found in Arrearage, the ſaid *C.* afterwards, to wit, the ſame Day and Year laſt aboveſaid, at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, in Conſideration thereof, took upon himſelf, and to the ſame *A.* then and there faithfully promiſed, that he the ſaid *C.* would well and truly pay and content to the ſaid *A.* the ſaid Fifty-five Pounds laſt mentioned, within three Months then next following: *And alſo* whereas afterwards, to wit, the Day and Year aforeſaid, at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, he the ſaid *C.* was indebted to the ſame *A.* in other Fifty-five Pounds, of like lawful Money of *Great Britain*, for ſo much Money of him *A.* by the ſaid *C.* to the Uſe of the ſaid *A.* before that Time had and received; and being ſo indebted, the ſaid *C.* afterwards, to wit, the ſame Day and Year laſt above-mentioned, at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, in Conſideration thereof took upon himſelf, and to the ſaid *A.* then and there faithfully promiſed,

miſed, that he the ſaid *C.* would well and truly pay and content to the ſaid *A.* the aforeſaid Fifty-five Pounds, when thereto he ſhould be afterwards required: *And alſo* whereas afterwards, to wit, the ſame Day and Year laſt aboveſaid, at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, the ſaid *C.* was indebted to the ſaid *A.* in other Fifty-five Pounds, of like lawful Money, for ſo much Money by him the ſaid *A.* unto the ſaid *C.* at the ſpecial Inſtance and Requeſt of the ſaid *C.* before that Time lent and accommodated; and being ſo indebted, the ſaid *C.* in Conſideration thereof, afterwards the ſame Day and Year laſt aboveſaid, at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, did take upon himſelf, and to the ſaid *A.* then and there faithfully promiſe, that he the ſaid *C.* would well and truly pay and content unto the ſame *A.* the aforeſaid Fifty-five Pounds laſt mentioned, when thereunto afterwards he ſhould be required; yet the ſaid *C.* not regarding his ſeveral Promiſes and Undertakings made as aforeſaid, but contriving and fraudulently intending the ſaid *A.* in this particular craftily and ſubtilly to deceive and defraud, the aforeſaid ſeveral Sums of Money, or any Part thereof, to the ſaid *A.* hath not paid, nor in any Manner hitherto ſatisfied and contented him for the ſame, altho' to do this the aforeſaid *C.* afterwards, to wit, ſuch a Day and Year aforeſaid, and often after at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, by the ſaid *A.* was required thereto; whereupon the ſaid *A.* ſaith he is the worſe, and hath Damage to the Value of Sixty Pounds; and therefore he brings his Suit, &c.

And now at this Day, to wit, on *Wedneſday* next after, *&c.* in this ſame Term, unto which Day the aforeſaid *C.* had Licence to Imparle, and then to Anſwer, *&c.* came before the Lord the King at *Weſtminſter*, as well the aforeſaid *A.* by his Attorney aforeſaid, as the aforeſaid *C.* by *J. B.* his Attorney; and the ſaid *C.* defends the Force and Injury, when and where, *&c.* And ſaith that the ſaid *A.* ought not to have or maintain his Action aforeſaid againſt him, becauſe he ſays, that well and true it is, that he the ſaid *C.* did take upon himſelf in Manner and Form aforeſaid, as the ſaid *A.* hath by his Declaration aforeſaid ſuppoſed; but the ſaid *C.* further ſaith, that after the making of the ſaid ſeveral Promiſes and Undertakings, to wit, the Day, *&c.* in the Year of our Lord, *&c.* he the ſaid *C.* at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, gave and delivered to the ſaid *A.* Two hundred Pounds weight of Green Tea, in full Satisfaction and Diſcharge of the ſeveral Promiſes and Undertakings aforeſaid, and of all the Monies in the ſaid Declaration mentioned; which ſaid Two hundred Pounds weight of Green Tea the ſaid *A.* then and there had and received from the ſaid *C.* in full Satisfaction and Diſcharge of the ſeveral Promiſes and Undertakings aforeſaid, and of all the Monies in the ſame mentioned; and this he is ready to verify: Wherefore he prays Judgment, if the ſaid *A.* ought to have or maintain his ſaid Action thereof againſt him, *&c.*

And the ſaid *A.* ſaith, that notwithſtanding any Thing by the ſaid *C.* above in Pleading alledged, he the ſaid *A.* ought not to be barred or precluded from having his Action aforeſaid

thereof

thereof againſt the ſaid *C.* becauſe by proteſting that the ſaid *C.* did not give or deliver to the ſaid *A.* the aforeſaid Two hundred Pounds weight of Green Tea, in full Satisfaction and Diſcharge of the ſeveral Promiſes and Undertakings aforeſaid, and of all the Monies in the ſame contained; for Plea the ſaid *A.* ſays, that he had not nor received from the ſaid *C.* the ſaid Two hundred Pounds weight of Green Tea, in full Satisfaction and Diſcharge of all the Monies in the ſeveral Promiſes and Undertakings aforeſaid mentioned, in Manner and Form as the ſaid *C.* hath in Pleading above alledged; and he prays that this may be inquired of by the Country, *&c.*

And the ſaid *C.* ſaith, That the Plea aforeſaid by him the ſaid *A.* in Manner and Form aforeſaid, above in his Replication pleaded, and the Matter in the ſame contained, are not ſufficient in Law for the ſaid *A.* to have or maintain his ſaid Action thereupon againſt him the ſaid *C.* To which the ſaid *C.* hath no Neceſſity, nor is bound by the Law of the Land in any wiſe to anſwer; and this he is ready to aver: Whereupon for Default of a ſufficient Replication in this Particular, the ſaid *C.* as before prays Judgment, and that the ſaid *A.* may be precluded from having his Action aforeſaid againſt him the ſaid *C.* thereupon.

And the ſaid *A.* further ſaith, That the Plea aforeſaid by him in Manner and Form aforeſaid, in his Replication above Pleaded, and the Matter in the ſame contained, are good and ſufficient in Law for him the ſaid *A.* to have and maintain his ſaid Action thereof againſt the ſaid *C.* which ſaid Plea, and the Matter therein

contained, the ſaid *A.* is ready to aver and prove, as the Court here ſhall award, *&c.* And becauſe the ſaid *C.* hath not anſwered to that Plea, nor hitherto hath in any Manner denied the ſame, the ſaid *A.* demands Judgment, and his Damages, by Occaſion of the Premiſſes to be adjudged to him, *&c.* But becauſe the Court of the ſaid Lord the King now here, are not yet adviſed of giving their Judgment of and upon the Premiſſes, Day is given thereupon to the Parties aforeſaid, before the Lord the King, at *Weſtminſter*, until, *&c.* (ſuch a Day next after ſuch a Return) for hearing of their Judgment on thoſe Premiſſes; and becauſe the Court of the ſaid Lord the King here are not yet adviſed of giving Judgment thereupon, *&c.* (that is, it was *continued* to a further Day for *arguing the Demurrer.*)

At which Day, before the Lord the King at *Weſtminſter*, came the Parties aforeſaid, by their Attornies aforeſaid; whereupon the Record and Matters aforeſaid being ſeen, and by the Court of the ſaid Lord the now King here fully underſtood, and all and ſingular the Premiſſes being examined, and mature Deliberation had thereupon, for that it ſeem'd to the Court of the ſaid Lord the King here, that the Plea aforeſaid by the ſaid *A.* in Manner and Form aforeſaid, above in his Replication pleaded, and the Matter in the ſame contained, are good and ſufficient in Law for him the ſaid *A.* to have and maintain his Action aforeſaid thereof againſt the ſaid *C.* whereby the ſaid *A.* remains thereon undefended by the ſaid *C. &c.* for which the ſame *A.* ought to recover his Damages, by Occaſion of the Premiſſes, againſt him

him the ſaid *C.* But becauſe it is unknown to the Court of the ſaid Lord the King now here, what Damages the ſaid *A.* hath ſuſtained by Reaſon of the Premiſſes, therefore it is commanded to the Sheriff of *L.* that by the Oaths of twelve honeſt and lawful Men of his Bailiwick, he diligently inquire what Damages the aforeſaid *A.* hath ſuſtained, as well by Occaſion of the ſaid Premiſſes, as for his Charges and Coſts by him expended about his ſuit in this Particular, and that the Inquiſition, which he ſhall take thereupon, he ſend to the Court of the Lord the now King, before the King himſelf at *Weſtminſter*, on the Day, *&c.* next after, *&c.* under his Seal, and the Seals of thoſe by the Oaths of whom that Inquiſition ſhall be taken, together with the Writ of the ſaid Lord the King to him thereof directed. The ſame Day is given to the ſaid *A.* there, *&c.*

At which ſaid Day before the Lord the now King at *Weſtminſter*, came the aforeſaid *A.* by his Attorney aforeſaid, and the ſaid Sheriff of *L.* to wit, Sir *J. B. &c.* by Virtue of the Writ of the ſaid Lord the King to him thereof directed, hath returned a certain Inquiſition before him taken at, *&c.* (ſuch a Houſe) in the Pariſh of, *&c.* in the Ward of *Cheap*, in the ſaid City of *London*, that the ſaid *A.* hath ſuſtained Damages by Occaſion of the Premiſſes aforeſaid, beſides his Coſts and Charges by him laid out and expended about his Suit in this Particular, to Forty Pounds ſix Shillings and eight Pence, and for his Coſts and Charges to Twenty-five Shillings and four Pence: Therefore it is conſidered, that the ſaid *A.* ſhall recover againſt the ſaid *C.* his Damages aforeſaid,

ſaid, aſſeſſed by the Jury aforeſaid, in Form aforeſaid; and alſo Nine Pounds four Shillings and ſix Pence for his Coſts and Charges to the ſaid *A.* by the Court of the ſaid Lord the now King, by his Aſſent adjudged of Increaſe; which ſaid Damages and Coſts do in the whole amount to Fifty Pounds ſixteen Shillings and ſix Pence; and the ſaid *C.* is in Mercy, *&c.*

Note. The *Plea*, *Replication* and *Demurrer* in the foregoing Record are ſigned by eminent Counſel, and their Names to be inſerted at the bottom of each. And eight Days Notice muſt be given to the Defendant of executing the *Writ of Inquiry*; alſo there is to be a *Subpœna* thereon for Witneſſes, and Tickets for them to appear before the Sheriff, and teſtify the Truth upon the Writ of Inquiry of Damages, to be executed in the Cauſe depending between *A. B.* Plaintiff and *C. D.* Defendant, in a Plea or Action of, *&c.*

Entry of the whole *Record* of an *Iſſue*, *Trial*, *Verdict* and *Judgment*, in Action of Debt.

Pleas before the Lord the King at Weſtminſter, *of* Trinity-*Term*, *in the Seventh Year of the Reign of our Sovereign Lord* George *the Second*, *King of* Great Britain, France *and* Ireland, &c. Roll 150.

South'ton, ſſ. IT is to be remembered, That heretofore, that is to ſay, in *Eaſter*-Term laſt paſt, before the Lord the now King

King at *Weſtminſter*, came *A. B.* Gentleman, by *T. H.* his Attorney, and brought here into the Court of the ſaid Lord the King, his certain Bill againſt *C. D.* in the Cuſtody of the Marſhal, *&c.* of a Plea of Debt; and there are Pledges of Proſecuting, to wit, *John Doe* and *Richard Roe*, which ſaid Bill follows in theſe Words: *South'ton, ſſ. A. B.* complains of *C. D.* in Cuſtody of the Marſhal of the *Marſhalſea* of the Lord the now King, before the King himſelf, of a Plea that he render to him Twenty-five Pounds of lawful Money of *Great Britain*, which he owes to him and unjuſtly detains; for that whereas by a certain Indenture made at, *&c.* in the County of *S.* aforeſaid, the Day and in the Year, *&c.* between the ſaid *A. B.* of the one Part, and the ſaid *C. D.* by the Name of *C. D.* of, *&c.* Gent. of the other Part, (which other Part of the ſaid Indenture under the Hand and ſealed with the Seal of the ſaid *C. D.* he the ſaid *A. B.* brings here into Court, the Date whereof is the ſame Day and Year above) the ſaid *A.* for and in Conſideration of the Rent and Covenants in the ſaid Indenture expreſſed, on the Part of the ſaid *C.* to be paid, kept and performed, demiſed and to farm let to the ſaid *C.* all that Meſſuage or Tenement with the Appurtenances, ſituate, lying and being in the Pariſh of, *&c.* aforeſaid, in the County aforeſaid, called or known by the Name of, *&c.* To hold to the ſaid *C.* his Executors, Adminiſtrators and Aſſigns, from the Feaſt of St. *Michael* the Archangel, then laſt paſt before the Date of the ſaid Indenture, for and during the Term of Seven Years then next enſuing, and fully to be compleat and ended: Yielding and

paying

paying therefore yearly, and every Year during the ſaid Term, to the ſaid *A.* his Executors, Adminiſtrators and Aſſigns, the Rent or Sum of Twelve Pounds and ten Shillings, of lawful Money, *&c.* to be paid at the Feaſts of the Annunciation of the Bleſſed Virgin *Mary*, and St. *Michael* the Archangel in every Year, by even and equal Portions. By Virtue of which ſaid Demiſe, the ſaid *C.* entered into the ſaid demiſed Premiſſes with the Appurtenances, and always from that Time was and yet is poſſeſſed thereof; and the aforeſaid Twenty-five Pounds was behind and unpaid, and ſtill is unpaid to the ſaid *A.* for the Rent aforeſaid, for two Years due and ending at the Feaſt of, *&c.* in the Year of our Lord, *&c.* whereby an Action hath accrued to the ſaid *A.* to demand and have of the ſaid *C.* the ſaid Twenty-five Pounds: Yet the ſaid *C.* tho' often required, hath not rendered or paid to the ſaid *A.* the ſaid Twenty-five Pounds, or any Part thereof, but hath hitherto wholly denied, and ſtill doth deny to render the ſame to him, to the Damage of the ſaid *A.* Fifty Pounds, and therefore he brings his Suit, and hath good Proof of the Premiſſes, when the Court will conſider thereof.

And now at this Day, that is to ſay, on *Friday* next after the Morrow of the *Holy Trinity*, in this ſame Term, to which Day the ſaid *C.* had Licence of Imparling, and then to anſwer, came before the Lord the King at *Weſtminſter*, as well the ſaid *A.* by his Attorney aforeſaid, as the ſaid *C.* by *J. B.* his Attorney; and the ſaid *C.* defends the Force, Injury and Damages, *&c.* when and where the Court will take the ſame into Conſideration, and ſaith, that

that he does not owe to the ſaid *A.* the aforeſaid Sum of Twenty-five Pounds, or any Penny thereof, in Manner and Form as the ſaid *A.* hath above againſt him declared; and of this he puts himſelf upon the Country, and the ſaid *A.* likewiſe: Therefore let a Jury thereof come before our Lord the King at *Weſtminſter*, on the Day next after, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame Day is given to the ſaid Parties there, *&c.*

Afterwards the Proceſs between the Parties aforeſaid, was continued of the Plea aforeſaid; and the Jury aforeſaid impanell'd between them thereupon are reſpited before the Lord the King at *Weſtminſter*, until *Wedneſday* next after three Weeks, *&c.* then next following, unleſs the Juſtices of the Lord the King appointed to hold the Aſſizes in the County aforeſaid, ſhall on *Tueſday* the Second Day of *Auguſt* at *W.* in the County aforeſaid, according to the Form of the Statute in that Caſe made and provided, firſt come for Default of Jurors, *&c.* At which Day, before the Lord the King at *Weſtminſter*, came the aforeſaid *A. B.* by his Attorney aforeſaid, and the ſaid Juſtices of the Lord the King of Aſſize before whom, *&c.* ſent here their Record before them had, in theſe Words, that is to ſay; Afterwards, to wit, on the Day and at the Place within contained, before *Philip* Lord *Hardwick* Chief Juſtice of the Lord the King of his Court of King's Bench, and, *&c.* to him aſſociated, and *Francis Page*, Knt. one of the Juſtices of the ſaid Lord the King appointed to hold the Aſſizes in the County of *S.* by Form of the Statute, *&c.* came as well the within

within named *A. B.* as the within written *C. D.* by their ſaid Attornies within mentioned; and the Jury being Summoned and Ballotted, according to the Form of the Statute in ſuch Caſe made, and tried and ſworn to declare the Truth of what is within contained, ſay upon their Oath, that the ſaid *C. D.* doth owe to the ſaid *A. B.* the aforeſaid Twenty-five Pounds in Manner as the ſaid *A.* hath within declared againſt him; and they aſſeſs the Damages of the ſaid *A.* on that Occaſion, beſides his Expences and Coſts by him about his Suit in this Particular laid out and expended, to the Sum of, *&c.* and for his Expences and Coſts to, *&c.* Therefore it is conſidered, that the ſaid *A.* do recover againſt the ſaid *C.* his Debt aforeſaid, and his Damages aſſeſſed by the Jury aforeſaid, by Reaſon of detaining the ſame, and alſo, *&c.* for his Expences and Coſts awarded by this Court to the ſaid *A.* with his Conſent, by way of Increaſe; which ſaid Damages do in the whole amount to, *&c.* And the ſaid *C.* is in Mercy, *&c.*

Entry of a *Declaration* upon two Bills for Money, with the *Pleadings*, *Iſſue*, and a *Special Verdict*, and *Judgment* thereon.

Pleas before the Lord the King at Weſtminſter *of*, &c. *Term*, *in the Year of the Reign*, &c.

London, ſſ. BE it Remembred, That heretofore, to wit, in, *&c.* Term laſt paſt, *A. B.* Merchant, by *T. H.* his Attorney, came

within

came before the Lord the King at *Weſtminſter*, and brought here into the Court of the ſaid Lord the King his Bill againſt *C. D.* being in the Cuſtody of the Marſhal, *&c.* of a Plea of Treſpaſs on the Caſe; and there are Pledges of Proſecution, to wit, *John Doe* and *Richard Roe*, which ſaid Bill follows in theſe Words: *London*, *ſſ. A. B.* Merchant, complains of *C. D.* in Cuſtody, *&c.* For that whereas on the Day, *&c.* in the Year of the Reign, *&c.* of the now King, at *L.* aforeſaid, to wit, in the Pariſh of, *&c.* he the ſaid *A. B.* being then a Merchant, had at the ſpecial Inſtance and Requeſt of him the ſaid *C. D.* then and there at ſingle Uſance, delivered to the ſaid *C.* then alſo a Merchant, to his own proper Uſe, One hundred Pounds of lawful Money of *Great Britain*, of the proper Monies of him *A.* and to be paid at the End of one Month then next following, by way of Exchange unto him the ſaid *A.* the Sum of One hundred and fifty Pounds in current Money of *Holland* in *Amſterdam* beyond the Sea; and whereas he the ſaid *C.* upon the Receipt of the aforeſaid One hundred Pounds, on the ſame Day of, *&c.* in the Year, *&c.* aforeſaid, at *L.* aforeſaid, in the Pariſh, *&c.* aforeſaid, for the Conſideration aforeſaid, had delivered according to the Uſe or Cuſtom of Merchants unto the ſaid *A.* two ſeveral Bills of Exchange, ſubſcribed with the proper Hand and Name of the ſaid *C. D.* and directed to one *E. F.* then reſiding in *Amſterdam* aforeſaid, beyond the Sea, and by the ſaid Bills requiring and appointing the ſaid *E.* to pay at ſingle Uſance his ſaid firſt Bill of Exchange (the ſaid ſecond Bill not being paid) to one *G. H.* or Bearer of the ſaid Bill of Exchange,

change, to the Uſe of the ſaid *A. B.* One hundred and fifty Pounds and eleven Shillings of *Flemiſh* Money, current in *Amſterdam* aforeſaid, at the Uſance there from *L.* aforeſaid, to wit, at the End of one Month from thence next following: And by the ſecond Bill of the ſaid two Bills, he the ſaid *C.* did then and there likewiſe require and appoint the ſaid *E. F.* to pay unto the aforeſaid *G. H.* to the Uſe of him the ſaid *A. B.* One hundred and fifty Pounds eleven Shillings of like *Flemiſh* Money, current in *Amſterdam* aforeſaid, (the ſaid firſt Bill of Exchange of him *C.* therein mentioned being unpaid.) And alſo whereas he the ſaid *C.* afterwards, to wit, on the aforeſaid Day, *&c.* in the Year of, *&c.* aforeſaid, at *L.* aforeſaid, in the Pariſh, *&c.* for and in Conſideration of the Premiſſes, did aſſume upon himſelf, and to the aforeſaid *A.* then and there faithfully promiſed, that if the ſaid *E. F.* did not accept the aforeſaid Bills of Exchange, or one of them, from the ſaid *A.* nor pay the ſaid One hundred and fifty Pounds and eleven Shillings, current *Flemiſh* Money, unto the ſaid *G. H.* to the Uſe of him the ſaid *A.* at the End of one Month then next enſuing; that then he the ſaid *C.* would well and truly pay to the ſaid *A.* One hundred Pounds of lawful Money of *Great Britain*, when he ſhould after the ſaid Month was ended be thereunto required. And the ſaid *A.* in Fact ſaith, That he the ſaid *A.* afterwards, and within the ſaid one Month, to wit, on the Day of, *&c.* in the Year, *&c.* aforeſaid, at *Amſterdam* aforeſaid, did ſhew and offer to the aforeſaid *E. F.* the two Bills of Exchange aforeſaid, and did then and there requeſt the ſaid *E.* to accept the ſame two

Bills of Exchange, or one of them; and that he the ſaid *E.* did then and there wholly refuſe to accept the ſaid two Bills, or either of them: Whereupon he the ſaid *A.* did afterwards, and within the aforeſaid Month, to wit, on the Day, *&c.* in the Year aforeſaid, at *Amſterdam* aforeſaid, Proteſt the ſame Bills, according to the Cuſtom of Merchants: And afterwards, to wit, on the Day, and in the Year, *&c.* to wit, in the Pariſh, *&c.* aforeſaid, the ſame *A.* gave Notice to the aforeſaid *C.* that the ſaid Bills, and either of them, were refuſed to be accepted by the ſaid *E. F.* and alſo gave Notice to the ſaid *C.* of the Proteſt of the ſaid Bills ſo made as aforeſaid. And further he the ſaid *A.* in fact ſaith, that the aforeſaid *E. F.* did not at the End of the ſaid one Month, or at any Time before or afterwards, pay to the aforeſaid *G. H.* the aforeſaid One hundred and fifty Pounds and eleven Shillings *Flemiſh* Money, to the Uſe of the ſaid *A.* according to the Tenor of the ſaid Bills: Nevertheleſs the ſaid *C.* not regarding his Promiſe and Aſſumption aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to defraud and deceive the ſaid *A.* of the aforeſaid One hundred Pounds of lawful Money of *Great Britain*, hath not yet paid the ſaid One hundred Pounds of lawful Money of *Great Britain* unto the ſaid *A.* altho' he the ſaid *C.* afterwards, to wit, on the Day of, *&c.* in the Year, *&c.* at *L.* aforeſaid, in the Pariſh, *&c.* aforeſaid, was required to do the ſame by the ſaid *A.* whereby he the ſaid *A.* was greatly hurt and damnified in his Credit with divers of the Lord the King's now faithful Subjects, and eſpecially with *J. K.* and *L. M.*

to

to whom the ſaid *A.* was indebted in the like Sum of One hundred Pounds of lawful Money of *Great Britain*, and to whom the ſaid *A.* had promiſed to pay the ſame at a Day now paſt, upon Hopes of the faithful Performance of the ſaid Promiſe and Aſſumption ſo made to the ſaid *A.* by the ſaid *C.* as aforeſaid; and whereby he the ſaid *A.* ſaith, that he is the worſe, and hath Damage to the Value of Two hundred Pounds; and therefore he brings his Suit, *&c.*

And the aforeſaid *C.* by *J. B.* his Attorney comes and defends the Force and Injury, when and where, *&c.* and ſaith, that he did not aſſume or take upon himſelf, in Manner and Form as the ſaid *A.* hath above declared againſt him; and of this he puts himſelf upon the Country, and the ſaid *A.* likewiſe: Therefore let a Jury thereof come before our Lord the now King at *Weſtminſter*, on *Monday* next after five Weeks from the Feaſt of *Eaſter*, &c. (here to be the *Venire* as before) Afterwards at the Day and Place within contained, before the faithful and well-beloved *P.* Lord *H.* Chief Juſtice of the Lord the now King within named, aſſigned to hold Pleas before the King himſelf, (*B. G.* Eſq; being aſſociated to him according to the Form of the Statute) came as well the within named *A. B.* as the within named *C. D.* by their Attornies within mentioned; and the Jurors whereof Mention is within made, being return'd according to the Statute in ſuch Caſe made and provided, appeared according to their Names in the Panel, to wit, *N. C. P. R. S. T. W. Y.* &c. who being elected, tried and ſworn, to ſay the Truth of what is within contained, ſay upon their Oath, that the within named *A. B.*

and *C. D.* are Merchants, and that on the Day of, *&c.* in the Year of the Lord the now King within written, the ſaid *A.* being a Merchant, did at the Special Inſtance and Requeſt of the ſaid *C.* then likewiſe a Merchant, deliver to the ſaid *C.* to the proper Uſe of him *C.* One hundred Pounds of lawful Money of *Great Britain*, being the Money of him the ſaid *A.* and to be paid by Way of Exchange thereof to the ſaid *A.* One hundred and fifty Pounds and eleven Shillings of current *Flemiſh* Money, at *Amſterdam* beyond the Sea; and that the ſaid *C.* upon the Receipt of the ſaid One hundred Pounds within ſpecified, did on the ſaid Day, *&c.* in the Year within mentioned, for the Conſideration aforeſaid, deliver according to the Cuſtom of Merchants, to the aforeſaid *C.* the within ſpecified two ſeveral Bills of Exchange, ſubſcribed with the proper Hand and Name of the ſaid *C. D.* and directed to the within named *E. F.* then being in *Amſterdam* aforeſaid, beyond the Seas, and by the ſame Bills required and appointed the ſaid *E.* to pay the ſame at Uſance, to wit, the firſt of the ſaid Bills of Exchange (the ſecond Bill not being paid) to be paid to the within named *G. H.* or the Bearer of the ſaid Bill, to the Uſe of the ſaid *A. B.* One hundred and fifty Pounds and eleven Shillings current *Flemiſh* Money, in *Amſterdam* aforeſaid, at the Uſance from *L.* within mentioned; and by the ſecond Bill of Exchange of the ſaid two Bills, he the within named *C.* did then and there likewiſe require and appoint the ſaid *E. F.* to pay to the aforeſaid *G. H.* to the Uſe of him the ſaid *A.* One hundred and fifty Pounds and eleven Shillings of current *Flemiſh* Money in

Amſterdam aforeſaid, at the Uſance from *L.* within mentioned (the ſaid One hundred and fifty Pounds eleven Shillings current *Flemiſh* Money, mentioned in the ſaid firſt Bill of Exchange of him *C.* not being paid.) And the Jurors aforeſaid do further ſay upon their Oath, That the Cuſtom, Uſage and Practice of Merchants is, and from the Time whereof the Memory of Man is not to the contrary hath been, That all Sums of Money payable on any Bill of Exchange at Uſance, are to be paid at the End of one Month next following the making of the Bill of Exchange, by which that Sum of Money is appointed to be paid; and further the ſaid Jurors upon their Oath ſay, that there is a certain Cuſtom and Uſage among Merchants uſed, and from the Time whereof the Memory of Man is not to the contrary, hath been uſed and approved, That if any Factor or Party, to whom any Bill of Exchange ſhall be directed, ſhall not accept the ſame Bill, or ſhall not pay the Sum of Money in the ſame contained, according to the Tenor of the ſame Bill of Exchange, then he who ſubſcribed or directed the ſame Bill, ought to pay the firſt Sum to him delivered or paid at any Time whatſoever, after the Time expired, by which the ſaid Sum ſo paid and delivered, ought and was appointed by the ſaid Bill of Exchange to have been paid, whenſoever he that received ſuch Sum ſhall be by the Deliverer thereof thereunto required: And the Jurors aforeſaid further ſay upon their Oath, That the within named *E. F.* to whom the within mentioned Bills of Exchange were directed, altho' the ſaid Bills of Exchange were ſhewn and offered to him the ſaid *E.* yet he accepted

neither

neither of the ſaid Bills of Exchange, nor paid any of the Sums of *Flemiſh* Money, payable by the ſame Bills of Exchange; and the ſaid Jurors further ſay upon their Oath, that the within named *A. B.* did within the Time in the ſaid Bills ſpecified, wherein the within mentioned Sums of *Flemiſh* Money were to have been paid, require the within named *C. D.* to repay unto the ſaid *A.* the within ſpecified Sum of One hundred Pounds, and that he the ſaid *C.* hath not yet repaid the ſaid One hundred Pounds. But whether upon the whole Matter aforeſaid, in Form aforeſaid found, it ſhall appear to the Court here, that the aforeſaid *C.* did aſſume and take upon himſelf, in Manner and Form as the within named *A. B.* hath within declared, or not, they the Jurors aforeſaid are wholly ignorant; and thereof pray the Advice of the Court of the Lord the now King here: And if upon that whole Matter ſo found in the Form aforeſaid, it ſhall appear to the Court of the ſaid Lord the now King here, that the ſaid *C.* did aſſume upon himſelf in Manner and Form within ſpecified, then the ſame Jurors do ſay upon their Oath, that the within named *C. D.* did aſſume and take upon himſelf, in Manner and Form as the within named *A. B.* doth complain againſt him; and they aſſeſs the Damages of the ſaid *A.* by Occaſion of the not performing of the aforeſaid Promiſe and Aſſumption, beſides his Expences and Coſts laid out by him about his Suit in this Particular, to One hundred and ten Pounds, and for thoſe Expences and Coſts to Fifty-three Shillings and four Pence: And if upon the whole Matter aforeſaid, found in Form aforeſaid, it ſhall appear to the Court of the

ſaid Lord the now King here, That the ſaid *C.* did not aſſume upon himſelf in Manner and Form as is within contained, then the ſaid Jurors ſay upon their Oath, that the aforeſaid *C.* did not aſſume upon himſelf, in Manner and Form alledged againſt him, as he the ſaid *C.* hath for himſelf by his Pleading within alledged.

And becauſe the Court of the ſaid Lord the King now here, are not yet adviſed and determined to give their Judgment of and upon the Premiſſes, a Day is thereupon given to the aforeſaid *A. B.* that he may be before the Lord the King at *Weſtminſter* on the Day, *&c.* next after, *&c.* and then to hear their Judgment, becauſe that the Court of the ſaid Lord the King here are not yet adviſed, *&c.* (and ſo it is continued until the next Term;) At which Day, before the Lord the King at *Weſtminſter*, came the Parties aforeſaid by their Attornies aforeſaid; upon which having ſeen, and by the Court of the ſaid Lord the now King here fully underſtood all and ſingular the Premiſſes, and with mature Deliberation thereupon had, it is conſidered, that the aforeſaid *A.* ſhall recover againſt the aforeſaid *C.* his Damages aforeſaid, aſſeſſed by the Jury aforeſaid, in Form aforeſaid, and alſo Thirteen Pounds ſix Shillings and eight Pence for his Expences and Coſts awarded by this Court to the ſaid *A.* with his Aſſent by Way of Increaſe; which ſaid Damages in the whole amount to One hundred twenty-ſix Pounds and ten Shillings; and be the ſaid *C.* amerced, *&c.*

Of

Of Executions, and the several Writs thereof, on Judgments in B. R.

Execution is the obtaining Possession of any Thing recovered by Judgment of Law: And when a Judgment is signed, Execution may be taken out immediately upon it.

At Common Law, where a Subject sued Execution on a Judgment, for Debt or Damages, he could not have the Defendant's Body, or his Lands in Execution; only his Goods and Chattels, and Corn and other present Profits of the Land: But now by Statute, Execution may be had against the Body of the Defendant, and future Profit of Lands, &c. And Writs of Execution bind the Property of Goods, only from the Time of Delivery of the Writ to the Sheriff, &c. But Land is bound from the Day of the Judgment. The Sale of Goods by the Defendant after Judgment, and before Execution, is good; and if assign'd by Fraud, and the Assignee sells them to another Person for a valuable Consideration, they are not subject to Execution. 1 *Inst.* 154. 3 *Rep.* 12. 29 *Car.* 2. 3.

A Judgment being signed, if Execution be not issued within a Year and a Day after, where there is no Fault in the Defendant, as Injunction, Writ of Error, &c. there must be a *Scire facias* to revive the Judgment; but where the Plaintiff sueth out any Writs of Execution within the Year, he may continue them afterwards: And if the Defendant be outlawed after Judgment, where he hath no Lands or Goods to pay the Debt, &c. and cannot be ta-

ken in a Year and a Day, the Plaintiff need not renew the Judgment by *Scire facias* to obtain Execution. *Lit.* 505. 1 *Inſt.* 290. 2 *Inſt.* 471, 895.

The Judgments of Courts are regularly to be executed in the Juriſdictions where given; but if a Judgment be affirm'd or reverſed for Error, *&c.* in *B. R.* Execution ſhall be had in that Court. If a Perſon arreſted in the Court of *B. R.* puts in Bail, and the Plaintiff recovers, if the Defendant doth not render himſelf, Execution may be taken out againſt the Principal or Bail; tho' if the Plaintiff takes the Bail, he ſhall never after take the Principal in Execution: If two Perſons be Bail, altho' one is in Execution, the Plaintiff may take the other; but if the Principal be in Execution, he cannot meddle with the Bail. And Writ of *Scire facias* iſſues againſt Bail, after Proceſs againſt the Principal return'd *Non eſt Inventus*, &c. *Cro. Jac.* 320. 5 *Rep.* 88. 1 *Lill. Abr.* 177.

When there are Chattels ſufficient, the Sheriff ought not to take the Lands of the Defendant in Execution; nor may any Thing fixed to the Freehold, Things bought *bona fide*, or pawned, *&c.* be taken. Sheriffs may deliver in Execution all Lands, whereof others ſhall be ſeiſed in Truſt for him againſt whom Execution is had, on a Statute, Judgment, *&c.* And Execution upon a Judgment, for the Debt of an Anceſtor, where the Heir has made over Lands deſcended to him, before the Action brought, may be taken againſt ſuch Heir, to the Value of the Land deſcended, as if his own Debt. And where there is an Execution againſt Goods or Chattels, of a Tenant for Life, or Years,

&c. the Plaintiff before Removal of the Goods by Virtue of the Writ of Execution, paying the Landlord the Rent of the Land, *&c.* ſo as there be not above a Year due; or if more, paying a Year's Rent, may proceed in his Execution, and the Sheriff is to levy the Rent paid, and Execution-Money. 8 *Rep.* 143. 29 *Car.* 2. *c.* 3. 3 & 4 *W.* & *M.* 14. 8 *Ann. c.* 17.

In Perſonal Actions, Execution may be three Ways; by *Capias ad Satisfaciend.* againſt the Body of the Defendant; *Fieri facias* againſt the Goods; or *Elegit* againſt the Lands, *&c.* In real and mix'd Actions, the Writs of Execution are *Habere facias Seiſinam*, to put the Plaintiff in Poſſeſſion of Freehold Lands recovered; and *Habere fac. Poſſeſſionem*, to put him in Poſſeſſion of his Term, *&c.* 1 *Inſt.* 289. 5 *Rep.* 86.

The *Capias ad Satisfaciendum* is a Judicial Writ, which iſſues out of the Record of a Judgment, where there is a Recovery in the Courts at *Weſtminſter* of Debt, Damages, *&c.* to take the Body of the Party in Execution, 'till Satisfaction be made: But it lieth not againſt a Peer of the Realm; nor againſt Executors or Adminiſtrators, but where a *Devaſtavit* is return'd by the Sheriff, *&c.* It is uſual to take out this Writ, when the Defendant hath no Lands nor Goods, whereof the Debt recovered may be levied; and where the Body is taken upon a *Ca. Sa.* and the Writ return'd and filed, it is an abſolute and perfect Execution againſt the Defendant, and no other Execution can be againſt his Lands or Goods: Tho' this is unleſs the Defendant eſcape, or die in Execu-

tion, &c. for where a Perſon dies in Execution, his Lands and Goods are liable to ſatisfy the Judgment, and a new Execution may iſſue. *Cro. Jac.* 143. 1 *Lill. Pract. Reg.* 250. 21 *Jac.* 1. *c.* 24.

A *Ca. Sa.* may be executed upon a Man in Priſon for Felony; and tho' he be acquitted of the Crime, the Sheriff may keep him; and it is an Eſcape to let him go. And if a Sheriff refuſe to execute a *Ca. Sa.* 'till his Fees are paid, an Action may be had againſt him for not doing his Duty; or on paying the Fees, he may be indicted. The Sheriff cannot upon a *Ca. Sa.* take the Money, and diſcharge the Priſoner; but on a *Fieri facias* he may take the Money. 1 *Lill. Reg.* 567. 1 *Salk.* 330. *Lutw.* 586.

A *Fieri facias* lies againſt the Goods and Chattels of a Man; and alſo againſt Executors or Adminiſtrators, to be levied of the Teſtator's Goods. The Sheriff is to levy the Debt or Damages on the Defendant's Goods and Chattels, and he may ſell a Term, Corn growing, &c. But Goods of a Stranger in the Poſſeſſion of the Defendant ſhall not be taken in Execution; for the Sheriff at his Peril muſt take Notice whoſe Goods they are; And he cannot break open Doors, to take the Goods. 8 *Rep.* 96. *Dalt. Sher.* 60.

Where a Sale is made of Goods by the Sheriff on a *Fieri facias*, it ſhall take Effect, tho' the Judgment is afterwards reverſed; but the Defendant ſhall be reſtored to the Value: And a Sheriff having ſold the Goods, after the Debt is levied, is Debtor to the Plaintiff; and if he doth not pay the Money, Action of Debt will lie againſt him, and his Executors: He cannot

on this Writ deliver the Goods to the Plaintiff, in Satisfaction of his Debt. If all the Money is not levied upon a *Fieri facias*, the Writ muſt be return'd before a ſecond Execution can be ſued; and there may be a *Teſtatum Fieri facias* into another County, if the Defendant hath not Goods in the County where the Action was laid to ſatisfy the Execution. 1 *Roll. Abr.* 892. *Cro. Car.* 387. 1 *Salk.* 318. 2 *Salk.* 589.

If a Writ of *Fieri facias* be delivered to the Sheriff, and no Warrant made upon it; and afterwards in the ſame Day, another is delivered, and a Warrant made out thereon, and it is executed the ſame Day or after, before the firſt; it ſhall take Place of the firſt Writ: But in Caſe two *Fieri facias's* are delivered to the Sheriff againſt the ſame Perſon, he ought to execute that firſt which is firſt delivered; or ſhall anſwer it to the Party, in an Action, *&c.* And if an Under-Sheriff procure Goods taken in Execution to be appraiſed at Under-value, *&c.* for this Oppreſſion of the Defendant, Indictment will lie. *Cro. Jac.* 426. 2 *Lill. Reg.* 516, 517. 1 *Salk.* 330.

An *Elegit* is a Writ of Execution, commanding the Sheriff to deliver to the Party recovering all the Goods and Chattels of the Defendant, (Beaſts of the Plough excepted) and Half of his Lands, *&c.* to be held until the whole Debt or Damages are ſatisfied: It is done by a Jury, ſummoned by the Sheriff to inquire what Land the Defendant had at the Time of the Judgment. If more than a Moiety of the Defendant's Land is delivered on an *Elegit*, it is void for the Whole; and where two Perſons have each a Judgment againſt one Man, if he

that

that hath the first Judgment brings a Writ of *Elegit*, and hath Half the Lands delivered in Execution; then the Party having the other Judgment, shall have only the Moiety of the Half not before extended by this Writ. *F. N. B.* 267. 1 *Sid.* 91. 2 *Salk.* 563. 1 *Nelf. Abr.* 698.

The Writ *Elegit* may be sued after a *Fieri facias* return'd *Nulla bona*; and after a *Ca. Sa.* on *Non est Inventus* returned: Levying of the Goods for Part is no Impediment to the bringing another *Elegit* for the Rest on the Lands; but when Lands are once taken, and this Writ is returned and filed, the Plaintiff cannot have any other Execution. The Plaintiff may, immediately after Entry of the Judgment, award as many *Elegits* into as many Counties as he thinks fit; and execute all, or any of them: Tho' if the Defendant hath Lands in more Counties than one, and the Plaintiff awards an *Elegit* to one County, and extends the Land upon it, and after files the Writ, he cannot afterwards sue out *Elegits* into the other Counties. A Plaintiff, not accepting of an *Elegit* at the Return thereof, may pray to have a new Writ. *Hob.* 57. *Westm.* 2. *c.* 18. 1 *Lev.* 92. *Cro. Jac.* 246. *Cro. Eliz.* 310.

If Tenant by *Elegit* be put out of Possession of the Land deliver'd to him, by the Heir at Law, *&c.* before Satisfaction is received, he may have Action of Trespass, or re-enter, and hold over 'till satisfied: And if such Tenant alien the Lands in Fee, *&c.* he who hath Right may bring Assise of *Novel Disseisin*; also a Defendant may enter on the Plaintiff, after Satisfaction made; and when the Money is levied, the Defendant shall recover his Land, and if more,

more, shall have Damages. *Stat. Westm.* 2. 4 *Rep.* 67, 28. *Terms de Ley* 208.

By Statute, if Lands delivered in Execution are recovered from the Tenant in Execution, before the Debt and Damages are levied; a *Scire facias* shall issue out of the Court from whence he had the Execution, returnable in the same Court; on the Day of Return whereof, if the Defendant make Default, or appear and do not plead a sufficient Cause, (other than the Plaintiff's former Acceptance of the Lands) to avoid the Suit for the Residue of the Debt, &c. the Court shall grant a new Writ of Execution for the Levying thereof. *Stat.* 32 *H.* 8. *c.* 5.

The Writ *Habere facias Seisinam* is directed to the Sheriff to give Seisin of a Freehold Estate recovered in the King's Courts by *Ejectione firmæ*, or other Action. To execute this Writ, the Sheriff may raise the *Posse Comitatus* in his Assistance: And where any House is recovered by Real Action, &c. the Sheriff may break open the House, if Entrance is denied, to deliver Possession and Seisin to the Person recovering; but he ought to signify the Cause of his Coming, and request that the Doors may be opened. *Old Nat. Br.* 154. 5 *Rep.* 91.

A Sheriff is not to deliver Possession of more than is contained in the Writ; if he doth, Action of the Case will lie against him, or Assise for the Lands: And Sheriffs cannot return upon the Writ *Habere facias Possessionem*, that another is Tenant of the Land by Right, &c. but is to execute the Writ, and leave the Right to be determined by Law. And the Party may have a new Writ, if a former be not well executed,

cuted, or return'd; but where Execution is made, and the Writ returned, the Court will never grant a new *Habere facias Poſſeſſionem*. The Sheriff having delivered Poſſeſſion in the Morning, ſome Time after he was gone, the Defendant turn'd out the Plaintiff; and it was held, that if he had been expulſed immediately, or whilſt the Sheriff or his Officers were there; an Attachment might be granted againſt the Defendant; for this had been a Diſturbance in Contempt of the Execution; but it being ſeveral Hours after the Plaintiff was in Poſſeſſion, the Court doubted, but agreed to grant a new *Habere facias*, &c. *Style* 238. 6 *Rep.* 52. 1 *Leon.* 145. 1 *Salk.* 321. 2 *Nelſ. Abr.* 779.

The *Sheriff's Fee* on an Extent or *Execution* is aſcertained by Statute not to be above 1 *s.* in the Pound, where under 100 *l.* nor more than 6 *d.* in the Pound, if above; and taking more, to pay treble Damages, and forfeit 40 *l.* *Stat.* 29 *Eliz. c.* 4. And by a late Act, Sheriffs are to be allowed 1 *s.* *per* Pound for levying Debts, &c. (except Poſt Fines due to his Majeſty) by *Levari facias* out of the *Exchequer*, when the Whole exceeds not 100 *l.* and 6 *d.* for every Pound above that Sum; and for all Debts leviable by *Fieri facias* and Extent, 1 *s.* 6 *d.* in the Pound, if the Sum is under 100 *l.* and 1 *s.* if above. For executing a Writ of *Habere facias Poſſeſſionem*, 1 *s.* in the Pound of the yearly Value of the Lands, where it exceeds not 100 *l.* *per Annum*; and 6 *d.* if above: And Sheriffs taking Poundage in a *Capias ad Satisfaciendum* for a greater Sum than the real Debt, to forfeit treble Damages and 200 *l.* 3 *Geo.* I. *c.* 15.

A Per-

A Perſon in Execution ſhall not be delivered out of Priſon, but by Writ of *Superſedeas*: An Execution may be ſtayed, or ſet aſide as irregular and erroneous, by *Superſedeas*, &c. *Raym.* 58. *Carthew* 460.

By the Statute 2 George 2. cap. 22. *for the Relief of Debtors in Priſon*, &c.

IT is enacted, that if any Perſons charged in Execution for any Sum, not exceeding in the whole 100 *l.* in any Gaol or Priſon, ſhall be minded to deliver up to their Creditors, all their Effects towards Satisfaction of their Debts; they may exhibit a Petition to any of the Courts of Law, from whence the Proceſs iſſued, upon which they were taken in Execution, certifying the Cauſe of their Impriſonment, and an Account of their whole Eſtate, and the Deeds and Notes relating thereto; alſo the Names of the Witneſſes to the ſame, to the beſt of their Knowledge; and upon ſuch Petition, the Court is by Order or Rule of Court to cauſe the Priſoner to be brought up, and the ſeveral Creditors to be ſummoned, to appear Perſonally, *&c.* in Court at a Day appointed, when the Court ſhall in a ſummary Way examine into the Matter of ſuch Petition, and hear what ſhall be alledged on both Sides, for or againſt the Diſcharge of ſuch Priſoner; and on ſuch Examination are to tender to the Priſoner, an Oath to this Effect, That the Account delivered in to the Court, is a full and true Account of all his Real and Perſonal Eſtate, Debts, Credits, *&c.* (except wearing Apparel and Bedding, and

Tools

Tools or Inſtruments of Trade not exceeding 20 *l.* Value) and that he hath not aſſign'd or made over the ſame, in Truſt to have any Benefit thereby, or to defraud any Creditors, *&c.*

And if on the Examination and taking the ſaid Oath, the Creditors are ſatisfied with the Truth thereof, the Court may immediately order the Lands, Goods and Effects, contained in ſuch Account, by a ſhort Indorſement on the Back of the Petition, ſign'd by the Priſoner, to be aſſigned to the ſaid Creditors, or one or more of them, in Truſt for the Reſt; in whom the Effects ſhall be veſted, and they may ſue for the ſame as Aſſignees of Commiſſioners of Bankrupts: And upon ſuch Aſſignment executed, the Priſoner ſhall be diſcharged out of Cuſtody by Order of Court; and the Gaoler is to diſcharge him without Fee; and the Aſſignees paying the Gaoler's Fees are to divide the Effects among themſelves, in Proportion to their Debts.

But if the Creditors, at whoſe Suit he was charged in Execution, ſhall not be ſatisfied with the ſaid Oath, but deſire further Time to inform themſelves therein, the Court ſhall remand the Priſoner, and order him and the Creditors ſo diſſatisfied, to appear in Court at another Day within the firſt Week of the following Term; and if at ſuch ſecond Day any Creditor not ſatisfied ſhall make Default in appearing, or not be able to diſcover any Eſtate or Effects of the Priſoner omitted in his Petition, or ſhew any Probability of his being forſworn in his ſaid Oath, the Court ſhall immediately cauſe the Priſoner to be diſcharged; unleſs ſuch Creditor do inſiſt upon his being detained in Priſon,

and agree, by Writing under his Hand, to pay the Priſoner 2 s. 4 d. *per* Week, ſo long as he ſhall continue in Priſon; and on Failure of any Payment, he ſhall forthwith be diſcharged.

The Debtor ſo diſcharged out of Priſon ſhall never after be arreſted for the ſame Debt; yet the Judgment againſt him ſhall ſtand in Force, and Execution may be taken out thereon againſt his Lands, Tenements, Goods or Chattels, (his wearing Apparel, Bedding for himſelf and Family, and neceſſary Tools for the Uſe of his Trade excepted) as if he had never been in Execution: And if any Priſoner ſhall be convicted of Perjury on an Indictment, in any particular Matter contain'd in his Oath aforeſaid, he ſhall ſuffer all the Pains and Forfeitures inflicted for wilful Perjury, and may be retaken upon any Proceſs *de novo*, and again charged in Execution for the ſaid Debt, in the ſame Manner as if he never were diſcharged, *&c.*

Sheriffs, Under-Sheriffs, Bailiffs, *&c.* offending againſt this Act, ſhall for every Offence forfeit to the Party grieved 50 *l.* to be recovered with treble Coſts, by Action of Debt, Bill, Plaint or Information, in any of the Courts at *Weſtminſter*.

And by the Act 3 George 2. c. 27. *for explaining and amending the foregoing Statute.*

PRiſoners in Execution for Debt, *&c.* not exceeding 100 *l.* in any Priſon, (except in *London* and *Weſtminſter* and Borough of *Southwark*) before

before they Petition any of the Courts at *Weſtminſter* from whence the Proceſs iſſu'd, for a Rule of Court to be brought up and diſcharged, *&c.* are to give Notice to their Creditors, at whoſe Suit they were charged in Execution, that they deſign to Petition, and alſo a true Copy of the Account or Schedule of their whole Eſtates which they intend to deliver in to the Court, *&c.* And then on ſuch Petition, the Priſoners ſhall have a Rule of Court to be brought to the next *Aſſizes* for the County, at an Expence not above 12 *d.* a Mile, to be paid to the Officer out of the Effects of the Priſoners, and if they have none, out of the County Stock, *&c.*

And the Creditors ſhall be ſummoned to appear at the ſaid Aſſizes, by Order ſerv'd on them, or left at their Houſes 30 Days before; and at the Aſſizes, the Judges on Examination in a ſummary Way, ſhall determine the Matter, and give Judgment and Relief; a Record of which Judgment is to be returned and certified to the Court whence the Proceſs iſſued, on which the Defendant was taken in Execution, to be a Record of the ſaid Court.

A Writ of Capias ad Satisfaciendum *in Debt.*

GEORGE the Second, *&c.* To the Sheriff of *S.* Greeting: We Command you, that you take *C. D.* if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us at *Weſtminſter* on *Wedneſday* next after, *&c.* (the Day of the Return) to make Satisfaction to *A. B.* of a Debt

of Thirty Pounds, which the ſaid *A.* lately recovered in our Court before us, and alſo for Thirty Shillings which in the ſame Court were awarded to the ſaid *A.* for his Damages which he ſuſtained, as well by Occaſion of the Detaining the ſaid Debt, as for his Expences and Coſts laid out by him about his Suit in that Behalf; whereof the ſaid *C.* is convicted, as appears to us of Record; and have you then there this Writ. Witneſs *Philip* Lord *Hardwick* at *Weſtminſter*, the Day, *&c.* in the Year of the Reign, *&c.*

A Teſtatum Ca. Sa. *in Action of Debt.*

GEORGE the Second, *&c.* To the Sheriff of *W.* Greeting: Whereas we lately commanded our Sheriff of *S.* that he ſhould take *C. D.* if he could be found in his Bailiwick, and keep him ſafely, ſo that he might have his Body before us at *Weſtminſter*, at a certain Day now paſt, to make Satisfaction to *A. B.* for a Debt of Thirty Pounds, which the ſaid *A.* hath lately recovered in our Court before us; and alſo Thirty Shillings and eight Pence, which were adjudged to the ſame *A.* in our Court before us for his Damages which he ſuſtained, occaſioned as well by the detaining his ſaid Debt, as for his Expences and Coſts laid out by him in proſecuting his Suit in that Behalf, whereof the ſaid *C.* is convicted, as appears to us of Record; and our ſaid Sheriff at that Day made a Return to us, that the ſaid *C.* was not to be found in his Bailiwick; whereupon on the Behalf of the ſaid *A.* it is ſufficiently teſtified in our Court

before us, that the ſaid *C.* wanders about, and lurks up and down in your County: Therefore we command you, that you take him, if he may be found in your Bailiwick, and ſafely keep him, ſo as you have his Body, *&c.* on the Day, *&c.* to ſatisfy to the ſaid *A.* the Debt and Damages aforeſaid; and have you there at the ſame Time this Writ. *Witneſs*, &c.

A Ca. Sa. *for the Reſidue in Caſe.*

GEORGE the Second, *&c.* To the Sheriffs of *L.* Greeting: Whereas by our Writ we lately commanded you, that you ſhould cauſe to be levied of the Goods and Chattels of *C. D.* in your Bailiwick, One hundred Pounds and ſeven Shillings, which *A. B.* lately in our Court before us at *Weſtminſter* recovered againſt him, for the Damages which he ſuſtained, occaſioned as well by not performing ſeveral Promiſes and Undertakings lately made by the ſaid *C.* to the ſaid *A.* as alſo for his Expences and Coſts laid out by him about his Suit in that Behalf, whereof the ſaid *C.* is convicted, as appears to us of Record; and that you ſhould have that Money before us at a certain Day now paſt, to render to the ſaid *A.* for his ſaid Damages, Expences and Coſts, notwithſtanding our Writ of Error, and Writ of *Superſedeas* thereupon iſſued: And you at that Day thereon made a Return to us, that the ſaid *C.* had no Goods or Chattels in your Bailiwick, whereby you were able to levy the ſaid Damages, Expences and Coſts, or any Part thereof; whereupon on the Part of the ſaid *A.* it was ſufficiently teſtified before us in our Court at *Weſtminſter*, that the ſaid *C.* had

ſufficient

ſufficient Goods and Chattels in our County of *Middleſex*, whereof the Sheriff of the ſaid County might cauſe to be levied the ſaid Damages, Expences and Coſts: Wherefore we commanded the ſaid Sheriff of *Middleſex*, that he ſhould cauſe to be levied of the Goods and Chattels of the ſaid *C.* in his Bailiwick, One hundred Pounds and ſeven Shillings, for the ſaid Damages, Expences and Coſts, and that he ſhould have there that Money before us at *Weſtminſter* on the Octave of St. *Hillary*, to render to the ſaid *A.* for his ſaid Damages, Expences and Coſts, notwithſtanding our ſaid Writ of Error, and our Writ of *Superſedeas*, iſſued as above: And our ſaid Sheriff of *Middleſex* at that Day Returned to us, that for the Execution to be made of the ſaid Writ to him directed, he had directed the Bailiff of the Libetty of the Dean and Chapter of the Collegiate Church of St. *Peter Weſtminſter*, (who hath full Execution of all Warrants, Writs and Mandates within that Liberty) to whom the ſaid Bailiff, that is to ſay, *G. W.* Eſq; gave him this Anſwer, That he had cauſed to be levied of the Goods and Chattels of the ſaid *C.* Fifty-ſix Pounds three Shillings, Parcel of the ſaid Debt and Damages, which ſaid Money he had ready before us at the Day and Place aforeſaid, to render to the ſaid *A.* in Part of his Damages aforeſaid; and he further certified to us, that the ſaid *C.* had no other or more Goods or Chattels in his Bailiwick, whereof he was able to cauſe to be levied the Reſidue of the ſaid Damages, or any Part thereof. Therefore we command you, that you take the ſaid *C.* if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that

you have his Body before us at *Weſtminſter* on the Day, *&c.* next after fifteen Days from the Feaſt of *Eaſter*, to make Satisfaction to the ſaid *A.* for Forty-four Pounds and four Shillings Reſidue of the ſaid One hundred Pounds and ſeven Shillings for the Damages aforeſaid; and have you then there this Writ. *Witneſs*, &c.

A Ca. Sa. *upon a Judgment affirmed on a Writ of Error.*

GEORGE the Second, *&c.* To the Sheriff of *G.* Greeting: We command you, that you take *C. D.* late of, *&c.* in your County, otherwiſe called, *&c.* if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us on the Day, *&c.* (ſuch a Return) whereſoever we ſhall then be in *England*, to make Satisfaction to *A. B.* for a Debt of Twenty Pounds, which the ſaid *A.* lately in the Court of our late beloved Father *George*, late King of *Great Britain*, &c. before Sir *R. F.* Knt. and his Companions, Juſtices of the Court of *Common Bench* at *Weſtminſter* recovered againſt him; and alſo for Fifteen Pounds for his Damages which he ſuſtained, as well by Reaſon of the detaining of the ſaid Debt, as for his Expences and Coſts laid out by him about his Suit in that Behalf, whereof the ſaid *C.* is convicted, as by the Inſpection of the Record and Proceedings thereof, (which in the ſame Court of the ſaid late King, before the ſaid late King himſelf, the ſaid King cauſed to be brought before him with certain Cauſes of Error, and which in the ſaid Court of our ſaid late

late Predeceſſor, before the ſaid late King himſelf, is in all Things affirmed) it appears to us of Record, now remaining before us; and alſo for Ten Pounds and ten Shillings which were awarded to the ſaid *A.* in the ſaid Court of the ſaid late King, before the ſaid late King himſelf, according to the Form of the Statute in that Caſe made and provided, for Damages, Expences and Coſts, which the ſaid *A.* had ſuſtained, by Reaſon of the Delay of the Execution of the ſaid Judgment, and by Means of the ſaid *C.*'s proſecuting the ſaid Writ of the ſaid late King, for correcting Errors ſued out of and upon the Premiſſes as aforeſaid, whereof the ſaid *C.* is likewiſe convicted, as alſo appears to us of Record; and have you there this Writ. *Witneſs*, &c.

Form of a Fieri Facias *in Debt.*

GEORGE the Second, *&c.* To the Sheriff of *M.* Greeting: We command you, that you cauſe to be made of the Goods and Chattels of *C. D.* (otherwiſe called, *&c.* if on a Bond, as in the Bond) in your Bailiwick, One hundred Pounds, which *A. B.* lately in our Court before us at *Weſtminſter*, recovered againſt him for a Debt; and alſo, *&c.* which were adjudged to the ſaid *A.* in our ſame Court before us, for his Damages which he ſuſtained, occaſioned as well by detaining of his ſaid Debt, as for his Expences and Coſts laid out by him in and about his Suit in that Behalf, whereof the ſaid *C.* is convicted, as appears to us of Record; and have you the ſaid Money before us

at *Weſtminſter* on *Monday* next after three Weeks from the Day of St. *Michael*, to render to the ſaid *A.* his Debt and Damages aforeſaid; and have you there, at the ſame Time, this Writ. Witneſs *Philip* Lord *Hardwick*, the Day, &c. in the Year, &c.

If the *Judgment* be *in Caſe upon a Promiſe*; That you cauſe to be made One hundred Pounds, which *A.* hath lately recovered againſt him in our Court before us at *Weſtminſter*, for his Damages which he ſuſtained, occaſioned as well by the not performing certain Promiſes and Undertakings, (or a certain Promiſe and Undertaking) lately made by the ſaid *C.* to the ſaid *A.* as for his Expences and Coſts, &c. — *If it be in Covenant*; then ſay, for his Damages which he ſuſtained, as well by Reaſon of breaking a certain Covenant, or certain Covenants, lately made between the ſaid *C.* and the ſaid *A.* as for his Expences and Coſts, &c. —— *If in Treſpaſs*; then, by Reaſon of a certain Treſpaſs committed againſt the ſaid *A.* by the ſaid *C.* with Force and Arms, and againſt our Peace, at, &c. in your County.

A Fi. Fa. *againſt an Executor or Adminiſtrator.*

GEORGE the Second, &c. To the Sheriff of, &c. That you cauſe to be made Seventy Pounds of the Goods and Chattels, which were of *E. F.* deceaſed, at the Time of his Death, in the Hands of *C. D.* Executor of the Laſt Will and Teſtament of the ſaid *E. F.* in your Bailiwick,

Bailiwick, (or in the Hands and Custody of *C. D.* Administrator of all and singular the Goods and Chattels, Rights and Credits, which were of the said *E. F.* at the Time of his Death, who died Intestate) which *A. B.* lately in our Court before us at *Westminster* recovered against him, *&c.* if he shall have so much in his Hands; and if he should not have so much in his Hands, then the Damages aforesaid, *&c.*

Note *in Case*; The whole Demand consists of Damages of the proper Goods and Chattels of the said *C. D.* and have you the said Money at *Westminster*, &c. as before.

A Testatum Fi. Fa. *in Debt.*

GEORGE the Second, *&c.* To the Sheriff of *D.* Greeting: Whereas we lately commanded our Sheriff of *M.* that he should cause to be made of the Goods and Chattels of *C. D.* in his Bailiwick, One hundred Pounds, which *A. B.* lately in our Court before us at *Westminster*, recovered against him for a Debt; and also, *&c.* (so much as the Costs are taxed at) which in our same Court before us were awarded to him for his Damages which he sustained, occasioned as well by the detaining of his said Debt, as for his Expences and Costs laid out by him about his Suit in that Behalf, whereof the said *C.* is convicted, as appears to us of Record; and that he should have the Money before us at *Westminster*, on *Monday* then next after, *&c.* to render to the said *A.* for the Debt and Damages aforesaid: And our said Sheriff of

M. made a Return to us at that Day, that the ſaid *C.* had not any Goods or Chattels in his Bailiwick, whereof he could cauſe to be levied the ſaid Money; whereupon, on the Behalf of the ſaid *A.* it is ſufficiently teſtified in our Court before us, that the ſaid *C.* hath Goods and Chattels ſufficient in your Bailiwick, whereof you may cauſe to be levied the ſaid Monies; Therefore we command you, that you cauſe to be made and levied the ſaid One hundred Pounds of the Goods and Chattels of the ſaid *C.* in your Bailiwick, for the ſaid Debt and Damages, *&c.* and have the ſaid Money before us at *Weſtminſter*, on the Day, *&c.* to be rendered to the ſaid *A.* for his Debt and Damages aforeſaid, in Form aforeſaid; and have you there then this Writ. *Witneſs*, &c.

The like Fi. Fa. *with a* Non omittas.

AND the ſaid Sheriffs of *L.* at that Day returned to us, that the ſaid *C. D.* had no Goods or Chattels in their Bailiwick, whereof the aforeſaid Damages, Expences and Coſts, or any Part thereof, could be made or levied; whereupon, on the Behalf of the ſaid *A. B.* it is ſufficiently teſtified in our ſame Court before us, that the ſaid *C.* hath ſufficient Goods and Chattels in your Bailiwick, whereof the ſaid Damages, Expences and Coſts may be cauſed to be levied; Wherefore we command you, that you do not omit, by Reaſon of any Liberty within your County, but that you enter therein, and of the Goods and Chattels of the ſaid *C.* in your Bailiwick, you cauſe to be made

One

One hundred and ſeven Pounds and ten Shillings for the ſaid Damages, Expences and Coſts, and have you thoſe Monies before us, on the Day, &c. whereſoever we ſhall then be in *England*, to be rendered to the ſaid *A.* for his ſaid Damages, Expences and Coſts; and have you alſo there, at the ſame Time, this Writ. *Witneſs*, &c.

A Fi. Fa. *againſt the Plaintiff for Coſts.*

GEORGE the Second, &c. To the Sheriff, &c. That you cauſe to be made Ten Pounds of the Goods and Chattels of *A. B.* in your Bailiwick, which were by this Court awarded, according to the Form of the Statute in ſuch Caſe made and provided, to *C. D.* for his Expences and Coſts, in his Defence in a certain Action of Treſpaſs at the Suit of the ſaid *A.* And have you the Money before us at *Weſtminſter*, on *Monday* next after, &c. to render to the ſaid *C.* for his Expences and Coſts aforeſaid; and have you then there this Writ. *Witneſs*, &c.

A Writ of Fi. Fa. *againſt Bail.*

GEORGE the Second, &c. To the Sheriff of *M.* Greeting: We command you, that of the Goods and Chattels of *B. F.* and *G. H.* Bail for *C. D.* in your Bailiwick, you cauſe to be made Forty-ſix Pounds, for a Debt which *A. B.* lately in our Court before us at *Weſtminſter* recovered againſt the ſaid *C. D.* and

alſo

also Thirty Shillings, which in our same Court were awarded to the said *A. B.* for his Damages which he sustained, as well by Reason of detaining his said Debt, as for his Expences and Costs laid out by him about his Suit in this Particular, whereof the said *C. D.* is convicted, as appears to us of Record; and whereupon it was adjudged in our said Court before us at *Westminster*, that the said *A. B.* might have an Execution against the said *E. F.* and *G. H.* for the said Debt and Damages, according to the Force, Form and Effect of a certain Recognizance acknowledged by them the said *E. F.* and *G. H.* in our Court before us, for the said *C. D.* at the Suit of the said *A. B.* as likewise appears to us of Record; and have you the Monies before us at *Westminster*, on the Day, *&c.* to render to the said *A. B.* for his Debt and Damages aforesaid, and have you there, at the same Time, this Writ. *Witness*, &c.

A Fieri Fa. *for Restitution, upon Reversal of a Judgment.*

GEORGE the Second, *&c.* To the Sheriff of *S.* Greeting: Whereas *A. B.* lately in our Court, that is to say, in *Hillary* Term in the Sixth Year of our Reign, before Sir *R. E.* Knt. and his Brethren, our Justices of the *Common Bench* at *Westminster*, by our Writ, and by the Judgment of the same Court, recovered against *C. D.* late of, *&c.* Twenty-one Pounds, which in our said Court of *Common Bench* at *Westminster* were awarded to the said *A.* for his Damages which he had sustained by Reason of certain

certain Treſpaſſes committed againſt the ſaid *A.* by the ſaid *C.* with Force and Arms, againſt our Peace, at, *&c.* aforeſaid, whereof he is convicted, as by the Inſpection of the Record and Proceedings thereof, (which we lately cauſed to be brought into our Court before us at *Weſtminſter*, with certain Cauſes for correcting Errors in the ſame) it appears to us of Record: And whereas we, by Reaſon of divers Errors in the ſaid Record and Proceedings aforeſaid, and alſo in giving the ſaid Judgment, have reverſed and totally annulled the ſame; it is conſidered, in our ſaid Court before us at *Weſtminſter* aforeſaid, that the ſaid *C.* be Reſtored to all Things which he hath parted with by Reaſon of the ſaid Judgment, and for that the ſaid *A.* ſued out his Execution thereupon, and the ſaid *C.* was thereon taken in Execution, and detained in Priſon until Payment was made to the ſaid *A.* of the ſaid Twenty-one Pounds: Therefore we command you, that of the Goods and Chattels of the ſaid *A.* in your Bailiwick, you cauſe to be made the ſaid Twenty-one Pounds, and have you thoſe Monies before us at *Weſtminſter* on the Day, *&c.* to Reſtore to the ſaid *C.* the ſaid Twenty-one Pounds, awarded to him by our ſaid Court before us as aforeſaid, upon the Reverſal of the ſaid Judgment; and have you there, at the ſame Time, this Writ. *Witneſs*, &c.

A Writ of Elegit *in Debt.*

GEORGE the Second, *&c.* To the Sheriff of *W.* Greeting: Whereas *A. B.* lately in our Court before us at *Weſtminſter*, by Bill without our Writ, and by the Judgment of the ſame Court, hath recovered againſt *C. D.* One hundred Pounds of Debt, together with Forty Shillings for his Damages which he hath ſuſtained, as well by Occaſion of the detaining of the ſaid Debt, as for his Coſts and Charges laid out by him about his Suit in that Behalf, whereof the ſaid *C.* is convicted, as appears to us of Record: And afterwards the ſaid *A.* came into our Court before us, and hath elected to be delivered to him all the Goods and Chattels of the ſaid *C.* (except the Oxen and Beaſts of his Plough) and likewiſe a Moiety of all and ſingular the Lands and Tenements of the ſaid *C.* in your Bailiwick, to be holden to him and his Aſſigns, (as his Freehold) according to the Form of the Statute in that Caſe made and provided, until the Debt and Damages aforeſaid ſhould be thereof fully levied. Therefore we command you, that to the aforeſaid *A.* all the Goods and Chattels of the ſaid *C.* in your Bailiwick, (beſides the Oxen and Beaſts of his Plough) and likewiſe the Moiety of all the Lands and Tenements of the ſaid *C.* in your Bailiwick, whereof the ſaid *C.* the Day of, *&c.* in the Seventh Year of our Reign, on which Day the Judgment aforeſaid was obtained, or at any Time afterwards he was ſeiſed, to the ſaid *A.* you cauſe to be delivered without Delay,

lay, by a reaſonable Price and Extent; to hold the ſaid Goods and Chattels to him as his own proper Goods and Chattels, and alſo to hold the ſaid Moiety of the Lands and Tenements aforeſaid, as his Freehold, to him and his Aſſigns, according to the Form of the Statute aforeſaid, until the Debt and Damages aforeſaid ſhall be thereof levied; and how and in what Manner this our Writ you ſhall have executed, make certainly known to us at *Weſtminſter*, on *Wedneſday* next after three Weeks from St. *Michael*, under your Seal, and the Seals of thoſe by whoſe Oath you ſhall make that Extent and Appraiſement; and have you then there this Writ. *Witneſs*, &c.

An Elegit, *after a former, on Diſcovery of more Lands.*

GEORGE the Second, *&c.* Whereas *A. B.* lately in our Court before us at *Weſtminſter*, by Bill, *&c.* (reciting the firſt Writ unto) To hold the ſaid Goods and Chattels, *&c.* and alſo the ſaid Moiety of the ſaid Lands and Tenements, *&c.* until the Debt and Damages aforeſaid ſhould be thereof levied; and in what Manner our Writ you ſhould have executed, to make appear to us at *Weſtminſter*, on the Day, *&c.* And you at that Day returned to us a certain Inquiſition taken before you, at the Houſe, *&c.* the Day, *&c.* laſt paſt, by the Oath of Twelve, *&c.* by which it was found that the aforeſaid *C. D.* was ſeiſed in his Demeſne as of Fee, at the Time of the Recovery of the Debt aforeſaid, of the Manor of, *&c.* and

and Lands, &c. And becauſe it is now given to us to underſtand by the aforeſaid *A. B.* that the ſaid *C.* at the Time of obtaining the aforeſaid Judgment, and afterwards, had and now hath divers other Lands and Tenements, beſides thoſe which are mentioned in the Return above ſpecified, of which ſaid other Lands and Tenements he alſo ought to have a Moiety in Execution, for the ſooner recovering the Debt aforeſaid; whereupon the ſaid *A.* hath humbly prayed us, that according as Right requires, he may be ſo enabled to have the ſame. Therefore we command you, that as well the Moiety of all other the Lands and Tenements of him the ſaid *C.* as a Moiety of thoſe which are in Execution for Payment of the Debt aforeſaid, being before extended, in your Bailiwick, likewiſe (in the Preſence of the ſaid *C.* to be provided for thereupon, if he will be intereſted) you cauſe to be delivered to the ſaid *A.* by a reaſonable Extent and Appraiſement; To hold to the ſaid *A.* and his Aſſigns, as his Freehold, until the aforeſaid One hundred Pounds ſhall be fully levied; and moreover what you ſhall do therein, ſend and make known to us at *Weſtminſter*, on the Day, &c. under your Seal, and the Seals of them by whoſe Oath you ſhall make that Extent and Appraiſement; and have you there, at the ſame Time, this Writ. *Witneſs*, &c.

A Writ of Scire Facias *upon a Judgment in Debt, after a Year.*

GEORGE the Second, *&c.* To the Sheriff of *M.* Greeting: Whereas *A. B.* lately in our Court before us at *Weſtminſter*, by Bill without our Writ, and by a Judgment of the ſame Court recovered againſt *C. D.* of, *&c.* Gentleman, Two hundred and fifteen Pounds for a Debt, and alſo Fifty Shillings for his Damages which he ſuſtained, as well occaſioned by the detaining of his ſaid Debt, as for his Expences and Coſts laid out by him about proſecuting his Suit in that Behalf, whereof the ſaid *C.* is convicted, as appears to us of Record; And now on the Part of the ſaid *A.* we have received Information in our Court before us, that altho' Judgment be thereof given, nevertheleſs Execution for the ſaid Debt and Damages ſtill remains to be made to him; wherefore the ſaid *A.* hath beſought us to provide him proper Relief in this Caſe: And we being deſirous, that what is Right and Juſt ſhould be done therein, command you, that by honeſt and lawful Men of your Bailiwick, you cauſe it to be known to the ſaid *C.* that he be before us at *Weſtminſter*, on the Day, *&c.* next after, *&c.* to ſhew if he knows of, or has any Thing to ſay for himſelf, why the ſaid *A.* ought not to have his Execution againſt him for the ſaid Debt and Damages, according to the Force, Form and Effect of the ſaid Recovery, if it ſhall ſeem expedient to the ſaid *C.* ſo to do, and further to do and receive that which

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our ſaid Court before us ſhall then and there conſider of in this Caſe; and have you there the Names of thoſe by whom you ſhall ſo cauſe it to be known to him, and this Writ. *Witneſs*, &c.

A Scire Fac. *againſt an Adminiſtrator, with Pleadings therein, in Caſe.*

GEORGE the Second, *&c.* To the Sheriff of, *&c.* Greeting: Whereas *A. B.* lately in our Court before us at *Weſtminſter*, by Bill, *&c.* recovered againſt *C. D.* Seventy Pounds for his Damages which he had ſuſtained, as well by Occaſion of the not performing certain Promiſes and Undertakings made by the ſaid *C.* to the ſaid *A.* as for his Expences and Coſts by him laid out about proſecuting his Suit in that Behalf, whereof the ſaid *C.* is convicted, as appears to us of Record; and now, on the Behalf of the ſaid *A.* we have received Information in our Court before us, that altho' Judgment be thereupon given, yet Execution of the ſaid Judgment remains to be made to him; and the ſaid *C.* is now dead Inteſtate, and Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits, which were the ſaid *C.*'s at the Time of his Death, was committed to one *E. D.* Widow and Relict of the ſaid *C.* after his Deceaſe, in due Form of Law at, *&c.* in your County, as in our Court before us we have received Information from the ſaid *A.* whereupon the ſaid *A.* hath humbly beſought us to provide him a proper Remedy in this Particular; and we being willing that what

is Right and Juſt ſhould be done in this Caſe, command you, that by honeſt and lawful Men of your Bailiwick, you cauſe it to be known to the ſaid *E.* that ſhe be before us at *Weſtminſter*, on the Day, *&c.* to ſhew if ſhe has, or knows of any Thing to ſay, why the ſaid *A.* ought not to have his Execution againſt her, for his ſaid Damages, Expences and Coſts, of the Goods and Chattels which were the ſaid *C.*'s, and that are unadminiſtred in the Hands of the ſaid *E.* according to the Force, Form and Effect of the Recovery aforeſaid, if it ſhall ſeem expedient to her; and further to do and receive whatſoever our Court before us ſhall conſider of in this Caſe: And have you then there the Names of thoſe by whom you ſhall cauſe it to be known to her, and this Writ. Witneſs *Philip* Lord *Hardwick*, the Day, *&c.* in the Seventh Year of our Reign.

At which ſaid Day, before the Lord the King at *Weſtminſter*, came the aforeſaid *A. B.* in his proper Perſon; and the Sheriff of, *&c.* to wit, *T. L.* Eſq; made a Return, that the aforeſaid *E. D.* &c. and the ſaid *E.* at the ſaid Day laſt mentioned, being duly ſummoned, by, *&c.* her Attorney likewiſe came: And upon this the ſaid *A.* prayed Execution againſt the ſaid *E.* for his Damages, Expences and Coſts aforeſaid to be adjudged to him, *&c.* And the ſaid *E.* ſaith, that the ſaid *A.* ought not to have his Execution againſt her, becauſe ſhe ſays, That there is no ſuch Record of the Recovery of the Damages, Expences and Coſts aforeſaid, as is above ſuppoſed by the Writ aforeſaid; and this ſhe is ready to make appear: Wherefore ſhe the ſaid *E.* prays Judgment, if the ſaid *A.* ought to

have his Execution againſt her for the Damages, Expences and Coſts aforeſaid, &c.

And the aforeſaid *A.* ſaith, That for any Thing by the ſaid *E.* above alledged, he ought not to be barred from having his Execution againſt her for his Damages, Expences and Coſts aforeſaid, becauſe he ſaith, that he has ſuch a Record of the Recovery of the ſaid Damages, &c. as above by the Writ aforeſaid is ſuppoſed, as appears by the Roll in *Hillary* Term in the Seventh Year of the Reign of the Lord the now King; and this he is ready to aver or atteſt by that Record; and prays that the Term and that Roll may be ſeen and inſpected into, by the Court of the ſaid Lord the King here: And becauſe the Court of the ſaid Lord the King now here, are not yet adviſed to give their Judgment of and upon the Premiſſes, a Day is thereupon given to the Parties aforeſaid, to be before the Lord the King at *Weſtminſter*, until the Day, &c. next after three Weeks of St. *Michael*, to hear their Judgment on that Iſſue, for that the Court of the ſaid Lord the King here, are not thereof yet, &c. (adviſed.)

A Sci. Fa. *againſt the Bail, in Action of Debt, and their Plea thereto*, &c.

GEORGE the Second, &c. To the Sheriff of *M.* Greeting: Whereas *A. B.* lately in our Court before us at *Weſtminſter*, by Bill without our Writ, and by a Judgment of the ſame Court recovered againſt *C. D.* &c. as appears to us of Record; and altho' Judgment be

thereof given, nevertheleſs Execution for the ſaid Debt and Damages ſtill remains to be made to him: And whereas *E. F.* of, *&c.* Gent. and *G. H.* of the ſame, Mercer, heretofore, that is to ſay, in the Term of St. *Michael*, in the Sixth Year of our Reign, perſonally came before us at *Weſtminſter*, and became Sureties and Bail, (or Manucaptors and Pledges) and each of them by himſelf became Surety and Bail for the ſaid *C.* that if it ſhould happen the ſaid *C.* ſhould be convicted at the Suit of the ſaid *A.* in the Plea or Action aforeſaid, then the ſame Bail or Manucaptors have granted, and each of them by himſelf hath granted, that as well the ſaid Debt, as all ſuch Damages, Expences and Coſts, which to the ſaid *A.* in that Suit ſhould be adjudged, of their and each of their own Lands and Chattels ſhould be made and levied, to the Uſe of the ſaid *A.* if it happened the ſaid *C.* that Debt, Damages, Expences and Coſts to the ſaid *A.* did not pay, or render himſelf to the Marſhal of our Priſon of the *Marſhalſea* before us; yet the ſaid *C.* the ſaid Debt, Damages, Expences and Coſts to the ſaid *A.* hath not paid, nor hath he the ſaid *C.* rendered himſelf to the ſaid Marſhal of our Priſon of the *Marſhalſea* before us, according to the Form and Effect of the Recognizance of Bail aforeſaid: Wherefore the ſaid *A.* hath beſought us to provide him a proper Remedy in this Particular, and we being willing that what is Right and Juſt ſhould be done to him in this Caſe; we command you, that by honeſt and lawful Men of your Bailiwick, you cauſe it to be known to the ſaid *E. F.* and *G. H.* that they be before us at *Weſtminſter* on *Wedneſday* next after, *&c.* to ſhew if they

have or know of any Thing to ſay for themſelves, why the ſaid *A.* ought not to have his Execution againſt them, for his ſaid Debt and Damages, according to the Force, Form and Effect of the ſaid Recognizance, if it ſhall ſeem expedient to them ſo to do; and further to ratify and approve of what our ſaid Court before us ſhall then and there conſider of in this Caſe; and have you there, at the ſame Time, the Names of thoſe by whom, *&c.*

And the ſaid *E. F.* and *G. H.* by, *&c.* their Attorney, come and pray Judgment of the Writ of *Scire Facias* aforeſaid, becauſe they ſay, that after the obtaining of the Judgment aforeſaid againſt the ſaid *C. D.* in Form aforeſaid had, and before the iſſuing of the ſaid Writ of *Scire Facias* againſt them the ſaid *E. F.* and *G. H.* no Writ of *Capias ad Satisfaciendum* of and upon that Judgment for the ſaid *A.* againſt the ſaid *C.* was in due Manner proſecuted and returned, which according to the Cuſtom of the Court of the Lord the King, before the King himſelf, from the Time whereof the Memory of Man is not to the contrary, hath been uſed and approved of in the ſame Court, ought to have been done before any Writ of *Scire Facias* againſt the ſaid *E. F.* and *G. H.* ought to have iſſued; and this they are ready to aver: Whereupon they pray Judgment, and that the Writ of *Scire Facias* aforeſaid may be ſtayed.

And the ſaid *A.* ſaith, that he for any Thing before alledged, from his Execution aforeſaid, of the Debt and Damages aforeſaid, by the ſaid *E. F.* and *G. H.* acknowledged in Form aforeſaid, under Colour of the aforeſaid Recognizance, ought not

not to be ſtayed; becauſe he ſaith, that after the rendering of the Judgment aforeſaid againſt the ſaid *C.* in Manner aforeſaid, and before the iſſuing of the ſaid Writ of *Scire Facias* againſt the ſaid *E.* and *G.* that is to ſay, the Day, *&c.* a certain Writ of *Capias ad Satisfaciendum* was ſued out of the Court of the ſaid Lord the King, before the King himſelf at *Weſtminſter*, againſt the ſaid *C.* directed to the then Sheriff of *S.* by which ſaid Writ, the ſaid Lord the King commanded the ſaid Sheriff to take the ſaid *C.* if he ſhould be found in his Bailiwick, and ſafely keep him, ſo that he might have his Body before the ſaid Lord the King at *Weſtminſter*, on the Day, *&c.* to make Satisfaction to the ſaid *A.* for a Debt of One hundred Pounds, and alſo Ten Pounds for his Damages, which the ſaid *A.* in the Court of the ſaid Lord the now King, before the King himſelf, had ſuſtained as well by Occaſion of the detaining that Debt, as for his Coſts and Charges by him laid out about his Suit in that Behalf, whereof the ſaid *C.* was convicted, as plainly appeared on Record; and that the aforeſaid Sheriff of *S.* ſhould have then there that Writ aforeſaid: Which ſaid Writ of *Capias ad Satisfaciendum*, of and upon that Judgment for the ſaid *A.* againſt the ſaid *C.* was in due Manner proſecuted, and before the Return of the ſame Writ, in due Manner delivered to the aforeſaid Sheriff of *S.* upon which the ſaid *A.* at the ſaid Return of the ſaid Writ, before the Lord the King at *Weſtminſter*, came in his proper Perſon; and then the Sheriff of *S.* that is to ſay, *&c.* at that Day ſent his Return, that the aforeſaid *C.* was not to be found in his Bailiwick; as by

the aforesaid Writ of *Capias ad Satisfaciendum* and the Return thereof, in the same Court of the said Lord the King, before the King himself at *Westminster*, among the File of Writs of *Ca. Sa.* in the same Court, remaining of Record filed, more fully and clearly it appears: And this he is ready to verify; wherefore the said *A.* demands Execution for the Debt and Damages aforesaid, in Form aforesaid acknowledged, by colour of the Recognizance aforesaid, to be adjudged to him, *&c.*

The Entry *of Execution by Default upon a* Scire facias.

THE Lord the King hath given in Charge the Sheriff of *S.* his Writ closed in these Words, to wit, *George* the Second, *&c.* (*Reciting the Writ of* Scire facias *verbatim, and adding the* Teste) At which Day, (the Return of the Writ) before the Lord the King at *Westminster* came the aforesaid *A. B.* in his proper Person, and the Sheriff of *S.* aforesaid, to wit, *J. S.* Esq; at that Day last mentioned returned, that he by Virtue of the aforesaid Writ to him directed, caused the said *C. D.* to know by *F. L.* and *G. M.* honest and lawful Men of his Bailiwick, that he might be before the Lord the King, at the Day and Place aforesaid, to shew if, *&c.* And further, *&c.* as within was commanded him: And the said *C.* so forewarned and made to be known, and at the same Day last mentioned solemnly required, did not come, but made Default; it is therefore considered, that the said *A.* may have Execution against him

him the ſaid C. for the Debt and Damages aforeſaid, according to the Force, Form and Effect of the Recovery aforeſaid, &c.

A *Scire facias* to ſhew Cauſe why there ſhould not be Execution, is in Nature of an Action, as the Defendant may plead to it; but it muſt always purſue the firſt Action, and whatever was pleadable to that in Abatement, ſhall not be pleaded to diſable the Plaintiff from having Execution. *Finch* 477.

This Writ was not at the Common Law, in Perſonal Actions, but was given by the Statute of *Weſtm.* 2. c. 45. And before that Statute, if the Plaintiff had not taken out Execution againſt the Defendant within a Year and a Day, he had no Remedy but a new Action of Debt on his Judgment; but now the *Scire facias* may be ſued out to revive it, which muſt be directed into the County where the original Action was brought, and not be granted 'till the Record of the Judgment is in Court. 2 *Lill. Pract. Reg.* 498.

Where either Plaintiff or Defendant, or one of the Plaintiffs or Defendants dies, Execution cannot be ſued out upon the Judgment, till a *Scire facias* obtained, and Judgment thereupon; in theſe Caſes there muſt be a new Judgment to warrant Execution: If Judgment is had againſt a Teſtator, there ſhall be a *Scire facias* againſt the Executor, tho' within the Year; the like againſt an Adminiſtrator of an Inteſtate, the Perſon being altered: And if one recovers againſt a Feme Sole, and ſhe is married within the Year and Day, *Scire facias* is to go againſt the Husband. After Removal of a Record into a Superior Court, *Scire facias* ſhall iſſue to

have Execution, &c. and a Writ of *Scire facias* may be ſued againſt a Sheriff, for not bringing the Money into Court levied on a Judgment. 2 *Lill. Reg.* 500. 3 *Mod. Rep.* 186, 274. 3 *Salk.* 320.

The Writ of *Scire facias*, after the Year and Day, may be had of Courſe againſt the Defendant without Motion; and if the Judgment be above Seven Years, and not above Ten Years old, a Rule may be had at the Side-bar for a *Scire facias*. But if it be more than Ten Years ſtanding, the Plaintiff muſt move the Court to obtain a Rule for it, before he can be able to make out ſuch Writ; and in order thereto, there is to be an Affidavit of the Debt being unſatisfied, and the Judgment not vacated, and that the Defendant is Living, and then the Court will grant the Rule accordingly. If the Sheriff returns *Nihil habet* on the firſt *Scire facias*, there may be an *Alias Scire facias*, and that being alſo return'd *Nihil*, it amounts to a *Scire feci*, and the Plaintiff after a Rule given, may enter up Judgment, and ſue out what Execution he pleaſes. But if there are not eight Days between the Teſte and Return of each *Scire facias*, the Court may quaſh them, and the Defendant demur thereto. 1 *Lutw.* 25. 2 *Salk* 599, 602.

If the Sheriff returns a *Scire facias*, and the Defendant does not, after Rule given of Four Days, appear and plead, the Plaintiff ſhall have preſent Execution: And if a Defendant being ſummoned, let it go by Default, he is for ever barred. There muſt be a particular Warrant of Attorney to a *Scire facias* againſt the Bail, for ſuch Warrant in the principal Action is no

War-

Warrant to the *Scire facias*, becauſe theſe are diſtinct Actions; and the particular Warrant is to be entered when the Suit begins, which is when the Writ is returned. 2 *Salk.* 603.

Not only a Releaſe, &c. may be pleaded by the Defendant in his Diſcharge; but where the Plaintiff in the Judgment releaſeth the Defendant of all Judgments and Executions, &c. he may ſue out a *Scire facias* againſt the Plaintiff to acknowledge his Releaſe; and need not have an *Audita Querela*. A *Scire facias* may be traverſed, before Judgment given upon it; and Writ of Error lies to reverſe a Judgment on a *Scire facias*, if the Writ whereon grounded was not good. *Hill.* 5 *W. & M. B. R.*

The Writ *Habere facias Poſſeſſionem*, &c. See under Proceedings in *Ejectment*.

Of Audita Querela's, to avoid Execution in B. R.

The Writ *Audita Querela* lieth, where a Man hath any Thing to plead, but hath not a Day in Court to plead the ſame: And it is brought where Judgment is given againſt one for Debt, &c. and his Body in Execution, upon Suggeſtion of juſt Cauſe that Execution ſhould not be granted. *F. N. B.* 102. 1 *Inſt.* 290.

An *Audita Querela* is in its Nature a Suit in Equity, praying Relief from ſome Charge that is coming upon a Man, either by a Statute or Judgment, or ſuch like, which he ought not to bear; or to eaſe him of a Charge already come upon him, as when a Judgment is executed, and his Lands, Goods, or Chattels ſeiſed, &c.

And

And ſometimes it is to pray the Aid of a Court of Juſtice to compel others, who ought to join in bearing the Burden with him. It is a Commiſſion to the Juſtices to call the Parties before them, and to hear the Complaint, and do Right therein: And there muſt be a Charge and Burden come, or coming upon the Party that is to have it, of which he ought by Law to be diſcharged; and then it muſt be in ſuch a Caſe wherein he hath no other Way to relieve himſelf. *Cro. Eliz.* 634. *Cro. Jac.* 29.

In Caſe a Debt is releaſed after Verdict, or after Judgment or Execution by the Plaintiff in the Suit, and it is ſo that the Defendant hath not Time, nor Place to plead it; there regularly he muſt be relieved by this Writ: And in all Caſes where a Judgment, or Judgment and Execution is had againſt one, and the Plaintiff makes a Releaſe, or the Defendant is releaſed by Act of Law, of a Duty or any Part of it, and yet the Plaintiff ſues out an Execution, the Defendant may have *Audita Querela*. And to Writs of Execution a Defendant cannot plead; ſo that if there be any Matter ſince the Judgment, to diſcharge him of the Execution, he is to bring *Audita Querela*. 36 *H.* 6. 24. 3 *Cro.* 153. *Plowd.* 72. *Dyer* 286. 1 *Mod.* 111.

Audita Querela cannot be ſued on a Releaſe, until Judgment is entered of Record: And upon any Releaſe or other Deed pleaded, no *Superſedeas* will be granted till the Plaintiff in the *Audita Querela* hath brought his Witneſſes into Court to prove the Deed; and if Execution be executed before, Bail is to be put in allowed of by the Court. On Allowance of *Audita Querela*, Bail muſt be given in Court; unleſs in Caſes of Neceſſity,

ceſſity, when it may be put in before two Judges: And by Bailing, the Party is in Cuſtody of the Law, and if he make not out his *Audita Querela*, he muſt render his Body in Execution again, or pay the Debt for which he is in Execution, or elſe his Bail muſt pay it. 1 *Lil. Pract. Reg.* 151. *Palm.* 422. *Cro. Jac.* 645.

One that was in Execution, brought *Audita Querela*, and prayed that he might be bailed; and it was granted, and he was bailed by four Perſons. Where before Execution this Writ is had by the Party grieved himſelf, or by his Heirs or Executors, on ſurmiſing good Cauſe for it, he or they are to give good Bail to proſecute, and ſtand to the Judgment of the Court, upon which he ſhall have a *Superſedeas* to ſtay Execution; but when the Plaintiff is in Priſon, 'tis ſaid no Bail is put in 'till the Obligee, &c. anſwers in the *Audita Querela*: And in this Caſe, there muſt be a Specialty to ſhew; if he be out of Priſon, the Court will bail him, tho' grounded upon a Surmiſe of Fact. An *Audita Querela* is no *Superſedeas*, and Execution may be taken out, if a *Superſedeas* be not ſued forth. *Palm.* 422. 1 *Vent.* 46. 1 *Salk.* 92.

If an Obligee hath an Extent on Lands, and ſells the ſame, if afterwards he releaſes to the Obligor, ſuch Obligor may have this Writ againſt him: And where the Obligee obtains a Judgment, and the Land of the Obligor's Heir is extended, if the Plaintiff aſſigns it over, and after the Aſſignment releaſes to the Heir; here he may bring an *Audita Querela* againſt the Aſſignee, without naming him who ſued out the Execution. If at the *Niſi prius* a Verdict be found

found againſt the Defendant; and before the Day in Bank, the Plaintiff releaſe to him all Actions and Demands, and then prays Judgment; the Defendant may have *Audita Querela*, for he cannot plead this at the Day in Bank, and before Judgment he may not bring his *Audita Querela*: But where the Party might have pleaded Matter in Diſcharge, and hath elapſed his Time, he ſhall not be relieved by this Writ; therefore where a Releaſe is made before Verdict, the Party ſhall not have it. *New Nat. Br.* 236, 239. 1 *Bulſt.* 140. *Cro. Eliz.* 35. 1 *Roll. Abr.* 306. 2 *Roll. Rep.* 128.

Where any Thing in an Obligation charges the Heir, Executor or Adminiſtrator unreaſonably, and againſt the Law, and no other Remedy is to be had, they may have an *Audita Querela*. If two joint and ſeveral Obligors be ſued jointly, and both taken in Execution; the Death or Eſcape of one, will not diſcharge the other, or give him this Writ: But if they are proſecuted ſeverally, and once Satisfaction is had againſt one of them, or againſt the Sheriff upon the Eſcape of one of them, the other may bring *Audita Querela*: Two are bound in a Bond, and two ſeveral Judgments againſt them; an *Elegit* is ſued out returned and filed againſt one, and a *Ca. Sa.* againſt the other, adjudged that *Audita Querela* lies for him to ſet it aſide. So if one binds himſelf and his Heirs in a Bond, and the Obligee recovers of the Heir, and after ſues the Executors for the ſame Cauſe, *&c.* they may have the Writ *Audita Querela*: But if one accepts of a leſſer Sum of Money for a greater Due, and that after the Day, and yet ſues the Bond; this Writ will not lie for the Defen-

Defendant, becauſe it lieth only where a Diſcharge is in Law. 5 *Rep.* 87. *Hob.* 58. 2 *Bulſt.* 97. *Cro. Jac.* 338. *Plowd.* 439. *Trin.* 18 *Jac.* 1. *B. R.*

If the Plaintiff hath had Satisfaction againſt one Treſpaſſer, and he afterwards proceeds againſt another, that other Perſon may have Relief by this Writ: Two Judgments are obtained upon Trials in two ſeveral Counties, for the ſame Battery againſt three Perſons, one is taken in Execution and Satisfaction acknowledged upon one of the Judgments; the other Two ſhall have *Audita Querela* upon the other Judgment, and they may all join in it when they have Cauſe to have the ſame. If a Judgment be againſt Three, and one of them is taken in Execution, and afterwards ſet at large by the Conſent of the Plaintiff; in this Caſe, if either of the others are taken in Execution upon this Judgment, he may be diſcharged by Writ of *Audita Querela.* *Hob.* 66. *Cro. Car.* 443, 444. *Style* 387.

A Man hath Goods from me by my Delivery, and another Perſon takes them from him, ſo that he is liable to both our Suits; if one of us ſue and recover againſt him, and then the other ſues him, his Remedy is this Writ. If a Leſſee covenants for him and his Aſſigns to repair, and the Leſſee aſſigns to another, and the Covenant is broken; then the Leſſor brings an Action againſt one of them, and recovers Damages, if he after proſecutes the other, he may bring *Audita Querela* for his Relief. And when a Judgment is had againſt a Man, who leaves his Land to ſeveral Heirs, *&c.* or if he enters into a Statute, and afterwards ſells his Lands to

divers

divers Purchasors; if one of the Purchasors, or one Heir alone is charged, he may have this Writ against the Rest to contribute to him. *Dyer* 232. *Bro. Abr. cap.* 74. 3 *Rep.* 44. 2 *Bulst.* 15.

The Plaintiff got an Attorney, without Notice to the Defendant, to appear for him, and had Judgment on a *Non sum Informatus*, upon which the Defendant was in Execution; here an *Audita Querela* was not granted: But 'twas said, he might be relieved by a Writ of Disceit against the Attorney. Where the Party is condemned by Default, and had no Day in Court to plead it, *Audita Querela* lieth: It has been held, if one be condemned on two *Nihils* return'd upon a *Scire facias*, and was never summoned, he shall have this Writ; but 'tis said if the Sheriff returns him warned, he may not bring it, because he is supposed to have an Opportunity to plead upon the Return of the *Scire facias*, and his Remedy must be against the Sheriff for a False Return. 2 *Cro.* 694. *New Nat. Br. Style* 372.

If one have Judgment against a Sheriff upon an Escape, and after the first Judgment, on which the Party was in Execution, is reversed for Error, the Sheriff may be relieved by this Writ; but not 'till it be reversed, tho' there be Error in it. And if after Judgment against Bail, the Judgment against the Principal is reversed, or the Money paid by the Principal, so that the first Judgment is satisfied; the Bail may have *Audita Querela*: And it may be brought by Bail to avoid an Execution against them, where no Process is sued forth against the Principal in his Life-time, *&c.* A Defendant on a Judgment

againſt him renders himſelf, but never gives Notice to the Plaintiff, nor gets the Bail diſcharged, and the Plaintiff on a *Scire facias* hath Judgment againſt the Bail: The Court would not relieve them on Motion, but put them to their *Audita Querela*. 8 *Rep.* 142. *Cro. Jac.* 645. *Goldſ.* 174. 1 *Salk.* 101.

A Plaintiff that ſues as Adminiſtrator, has his Letters of Adminiſtration revoked; the Defendant muſt be relieved by *Audita Querela*, for he cannot plead it. The Foundation of a Suit is relievable on an *Audita Querela*, and not aſſignable for Error in Fact: And where a Matter aſſign'd for Error, is Matter incident only to the Writ, and not in the Proceedings of the Cauſe, a Writ of Error will not lie, but *Audita Querela*; as when a *Scire facias* is brought by an Adminiſtrator, and Matter of Fact is alledged therein that is not true, there the proper Relief is this Writ. *Style* 417. *Comberb.* 325. *Carthew* 282.

The Writ *Audita Querela* may be had, where a Recognizance or Statute entered into is defective, and not good; or being upon an uſurious Contract, by Dureſs of Impriſonment, where there is a Defeaſance upon it, *&c.* And when Lands are extended before the Time, *&c.* *Audita Querela* lieth: But if an *Audita Querela* be unduly gotten, upon a falſe Surmiſe, it may be quaſhed. A Man nonſuited in an *Audita Querela* may have a new Writ. *Moor, ca.* 1097. 2 *Bulſt.* 320. 1 *Bulſt.* 140. *F. N. B.* 104.

If an *Audita Querela* is founded on a Record, or the Perſon bringing it be in Execution, the Proceſs upon it is a *Scire facias*; but if founded on Matter of Fact, or the Party be not in Execution,

cution, then the Proceſs is by *Venire*: Upon the *Venire facias*, a *Diſtringas* ſhall iſſue, and if the Defendant in the *Audita Querela* appear not, (unleſs the Sheriff returns *Nihil habet*) there ſhall go an *Alias* and *Pluries*, and after theſe a *Capias* may be had; and it is ſaid, if he comes not in upon an *Alias*, &c. the Uſe hath been, that upon Motion the Party in Priſon may be diſcharged. 1 *Salk.* 92. *Moor* 811.

Where *Audita Querela* is brought before the Execution of a Judgment *quia timet*, and it goes for the Defendant, he ſhall execute his principal Judgment: If it be had after the Party is in Execution, and he is bailed out, then the Judgment being once executed, there can be no Reſort to that, but the Defendant ſhall proceed on the Record of the *Audita Querela*. 1 *Vent.* 264.

The Judgment for the Plaintiff, in this Writ or Action, is to be diſcharged of Execution: And where a Plaintiff in *Audita Querela* gets Judgment, he ſhall have Reſtitution of his Goods, tho' taken in Execution before the Writ brought. *Sid.* 74.

Entry of a Writ of *Audita Querela*, the Declaration therein, a Demurrer, and Judgment.

Pleas before the Lord the King at Weſtminſter, *of Trinity-Term, in the Fifth Year of the Reign of our Sovereign Lord* George *the Second, King of* Great Britain, &c. *Roll* 234.

OUR Sovereign Lord the King hath ſent to his Juſtices, aſſign'd to hold Pleas before himſelf, his Writ under the Great Seal of *Great Britain*, in theſe Words: *GEORGE* the Second, by the Grace of GOD, of *Great Britain*, *France* and *Ireland*, King, Defender of the Faith, *&c.* To our Juſtices aſſigned to hold Pleas before us, Greeting. We having received Information, by the grievous Complaint of *M. D.* Widow, Adminiſtratrix of the Goods and Chattels which were the Property of *C. D.* Gentleman, deceaſed; that whereas one *A. B.* not long ſince, to wit, in the Term of, *&c.* in the Year of the Reign, *&c.* of our late beloved Father *George*, late King of *Great Britain*, in the Court of the ſaid late King, before the King himſelf, by a Judgment of the ſaid Court, had recovered againſt the ſaid *C. D.* and one *E. F.* Eſq; One hundred and fifty Pounds of Debt, and alſo Forty Shillings, which were in the ſame Court adjudged to the ſaid *A.* for his Damages which he had ſuſtained, as well by Occaſion of the Detaining his ſaid Debt, as for his Expences and Coſts by him laid out about his Suit for Recovery of the ſame, whereof they

were convicted; as by the Record and Proceedings thereof now remaining in our Court before us at *Weſtminſter*, may plainly appear: And afterwards the ſaid *C.* in the Life-time of the ſaid *E.* that is to ſay, on the Day, &c. in the Year, &c. died, and the ſaid *E.* him ſurvived; by whoſe Death, and by the Laws of the Kingdom, the Goods and Chattels of the ſaid *C.* at the Time of his Death, in the Hands of whatſoever Adminiſtrator or Adminiſtrators unadminiſtred, became altogether diſcharged from the Debt and Damages aforeſaid, which the ſaid *M.* by ſuch Ways and Means as ſhall be thought moſt proper by the Court, is ready to make appear. Nevertheleſs the aforeſaid *A.* contriving and intending unjuſtly to vex, and greatly to injure the ſaid *M.* by Colour of the Judgment aforeſaid, not long ſince, and after the Death of the ſaid *C.* that is to ſay, in the Term of, &c. in the Fourth Year of our Reign, the ſaid *A.* proſecuted out of our ſaid Court before us at *Weſtminſter*, our Writ of *Scire facias* againſt the ſaid *M.* as Adminiſtratrix of the Goods and Chattels of the ſaid *C.* of and upon the Judgment aforeſaid, directed to the then Sheriffs of *L.* By which ſaid Writ, reciting that whereas the aforeſaid *A.* heretofore, in the Court of our ſaid late Father King *George*, before the King himſelf, by Bill without any Writ of the ſaid late King, and by the Judgment of the ſame Court, had recovered againſt the ſaid *E. F.* otherwiſe called *E. F.* of, &c. in the County aforeſaid, Eſq; and the ſaid *C. D.* otherwiſe called, &c. the aforeſaid One hundred and fifty Pounds for a Debt, and alſo Forty Shillings for his Damages, which he had ſuſtained by Occaſion

ſion of Detaining that Debt, as alſo for his Expences and Coſts by him laid out in carrying on his Suit for Recovery of the ſame, whereof they were convicted, as appeareth of Record; and reciting and ſuggeſting, that the aforeſaid *E.* the Day, *&c.* in the Year of the Reign, *&c.* died at *L.* in the Pariſh of the Bleſſed *Mary* of the *Arches*, in the Ward of *Cheap*, and the aforeſaid *C.* ſurvived him; and that afterwards, to wit, the Day and Year, *&c.* the ſaid *C.* died Inteſtate at *L.* aforeſaid, in the Pariſh and Ward aforeſaid; and after his Death, Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits, which were of the ſaid *C.*'s at the Time of his Death, was in due Form of Law granted to the ſaid *M. D.* (the ſaid Debt and Damages being then unſatisfied to the ſaid *A.*) and that the aforeſaid *A.* had beſought us to grant him proper Relief in that Particular; and we being willing, that whatſoever was juſt ſhould be done in that Caſe: We therefore by the ſaid Writ commanded the ſaid Sheriffs of *L.* that by honeſt and lawful Men of their Bailiwick, they ſhould cauſe it to be known to the ſaid *M.* that ſhe was to have been before us at *Weſtminſter*, on *Monday* next after, *&c.* then next following, to ſhew if ſhe had or knew any Cauſe, why the ſaid *A.* ought not to have his Execution for the Debt and Damages aforeſaid, of the Goods and Chattels of the ſaid *C.* unadminiſtred by the ſaid *M.* if ſhe thought proper ſo to do; and further to do and receive whatſoever the ſaid Court before us, ſhould then conſider of, under the Circumſtances of the ſaid Caſe, and that they ſhould have then and there

the Names of those by whom they should so cause it to be known to her, and likewise that Writ: At which Day came the said *A.* into our said Court before us, in his proper Person, and the said Sheriffs of *L.* then return'd to us, that the said *M.* had not any Thing in their Bailiwick, by which they could cause to be known to her the Purport of the said Writ, nor was she to be found in the same, and the said *M.* came not; therefore, as before, the said Sheriffs of *L.* were by the same Court commanded, that by honest and lawful Men of their Bailiwick, they should cause it to be known to the said *M.* that she was to be before us at *Westminster*, on the Day, *&c.* then following, to shew Cause in Form aforesaid, *&c.* The same Day was given to the said *A.* by the said Court, before us then to be there, *&c.* At which said last Day, came in his proper Person the said *A.* into the said Court before us, and the said Sheriffs of *L.* as before returned to us, that the said *M.* had nothing in their Bailiwick, whereof they could make known unto her the Purport of the said Writ, nor was she to be found in the same; and the said *M.* altho' solemnly demanded at the same Day, came not, but made a Default: Wherefore it was then and there considered by the said Court before us, that the said *A.* should have Execution for the Debt and Damages aforesaid, to be levied of the Goods and Chattels of the said *C.* at the Time of his Death unadministred by the said *M.* as by the Records and Proceedings thereof, now remaining in our Court before us at *Westminster*, may also plainly appear. And altho' the said *M.* was never summoned

moned in the aforeſaid Plea, by Virtue of the ſaid Writ, to ſhew Cauſe why the ſaid *A.* ought not to have ſuch Execution againſt her, *&c.* and the ſaid *M.* and her Goods and Chattels ought not of Right to have been chargeable to ſuch Execution, yet the ſaid *A.* doth reſolve and threaten, that by ſuch Execution he will levy the Debt and Damages aforeſaid, to the great Damage and Injury of the ſaid *M.* and contrary to the Laws and Cuſtoms of our Kingdom of *England.* Wherefore in as much as the ſaid *M.* hath humbly pray'd us to provide her Relief in this Caſe, we being unwilling that the ſaid *M.* ſhould any Ways be injured, and willing that what is right and juſt ſhall be done to her therein; We command you, that in order to hear the Complaint of the ſaid *M.* you call before you the aforeſaid Parties, and ſuch others, as it ſhall ſeem meet to you to convene; and having heard the ſaid Parties, and their Reaſons, you cauſe to be done full and ſpeedy Juſtice to the ſaid Parties, which of Right, and according to the Laws of our Kingdom, remaineth and ought to be done, *&c.*

Afterwards, to wit, on *Wedneſday* next after, *&c.* this ſame Term, comes the ſaid *M. D.* before our Sovereign Lord the King at *Weſtminſter*, by, *&c.* her Attorney, and ſaith, That the aforeſaid *A.* ought not to have his Execution againſt her for the Debt and Damages aforeſaid, to be levied of the Goods and Chattels which were the Property of the ſaid *C.* at the Time of his Death, unadminiſtred by the ſaid *M.* Becauſe ſhe ſaith, that the ſaid *A.* heretofore, that is to ſay, in, *&c.* Term, in the Year of the Reign, *&c.* in the Court of the ſaid then

King, before the King himſelf, by a Judgment of the ſame Court recovered, &c. (Reciting the Recovery of the Judgment in the King's Bench, the Death of C. one of the Defendants in the Life-time of the other, and the Suing out a *Scire facias* againſt the Adminiſtrator of the Deceaſed, that the Defendant therein was not ſummoned to ſhew Cauſe why there ſhould not be Execution againſt her, and the Grievance as above in the Writ) to the great Damage of the ſaid *M.* and contrary to the Laws and Cuſtoms of this Kingdom; and this the ſame *M.* is ready to verify: Wherefore ſhe prayeth the Judgment of this Honourable Court, and that the aforeſaid *A.* may be precluded from having any Execution of and upon the Recovery aforeſaid, to be levied of the Goods and Chattels of the ſaid *C.* unadminiſtred by the ſaid *M.* And that the ſaid *M.* may be reſtored to all Things which ſhe hath loſt and been deprived of, by Occaſion of the Award of the Execution aforeſaid, &c. And the aforeſaid *A.* came here into Court, to have given an Anſwer of and upon the Premiſſes; but becauſe the Court of the Lord the King now here, before the King himſelf, know not whether the Allegations of the ſaid *M.* in this Particular be true or not; therefore the Sheriff of, &c. is commanded to cauſe the ſaid *A.* to come before the Lord the King, the Day, &c. whereſoever he ſhall then be in *England*, to make Anſwer of and concerning the Premiſſes, and further to do and receive whatſoever this Court ſhall conſider of, under the Circumſtances of this Caſe: At which Day comes the ſaid *M.* before the Lord the King at *Weſtminſter*, by her ſaid Attorney, and the ſaid *A.* at the

ſame

ſame Day comes likewiſe by, &c. his Attorney, and ſaith, that the Matter contained in the ſaid Writ and Declaration, is not ſufficient in Law, to compel the ſaid *A.* to make any Anſwer thereto, or to hinder his ſaid Execution from being levied of the Goods and Chattels of the ſaid *C.* at the Time of his Death, unadminiſtred by the ſaid *M.* To which the ſaid *A.* is under no Neceſſity, nor any Ways bound by the Law of the Land to make Anſwer; and this he is ready to verify; and therefore by Reaſon of the Defect of a ſufficient Writ and Declaration in this Cauſe, the ſaid *A.* prays the Judgment of this Honourable Court concerning the ſaid Writ and Declaration, and that the ſame may be quaſhed.

And the aforeſaid *M.* ſaith, that the aforeſaid Writ and Declaration ought not to be quaſhed; becauſe ſhe ſaith, that the Writ and Declaration in this Cauſe, and the Matter contained therein, are good and ſufficient in Law, to preclude the ſaid *A.* from having his Execution againſt the ſaid *M.* of and upon the Judgment aforeſaid, to be levied of the Goods and Chattels of the ſaid *C.* unadminiſtred by the ſaid *M.* which ſaid Writ and Declaration, and the Matter therein contained, the ſaid *M.* is ready to verify and prove, as the Court ſhall think fit: And becauſe the ſaid *A.* hath not anſwered to the ſaid Writ and Declaration, nor yet any Ways denied the Matter therein contained, the ſaid *M.* as before prayeth the Judgment of this Honourable Court, and that the ſaid *A.* may be precluded from having any Execution whatſoever, of and upon the Recovery aforeſaid, to be levied of the Goods and Chattels of the ſaid *C.* unadminiſtred

ſtred by the ſaid *M.* and that all Things whatſoever that ſhe hath loſt, or been deprived of, by Occaſion of the Award of the Execution aforeſaid, may be reſtored to her. But becauſe this Court are not yet adviſed what Judgment to give of and concerning the Premiſſes, a Day therefore is given to the aforeſaid Parties, to appear before our Sovereign Lord the King, from the Day of, *&c.* whereſoever his Majeſty ſhall then be in *England*, to hear the Judgment of the Court, of and concerning the Premiſſes, becauſe the ſaid Court of our ſaid Lord the King are not determined, *&c.* at which Day come the aforeſaid Parties before our Lord the King at *Weſtminſter*, by their Attornies aforeſaid; whereupon all and ſingular the Premiſſes being viewed, and fully underſtood by this Court, and upon mature Deliberation thereupon had, in as much as it appeareth to the ſaid Court here, that the Writ and Declaration aforeſaid, and the Matters therein contained are good and ſufficient in Law, to preclude the ſaid *A.* from having his Execution, of and upon the Judgment aforeſaid againſt the ſaid *M.* to be levied of the Goods and Chattels of the ſaid *C.* unadminiſtred by the ſaid *M.* Therefore it is conſidered, that the aforeſaid *A.* ſhall be precluded from having his ſaid Execution, of and upon the Recovery aforeſaid, to be levied of the Goods and Chattels of the ſaid *C.* at the Time of his Death, unadminiſtred by the ſaid *M.* and that ſhe the ſaid *M.* ſhall be Reſtored to all Things, which ſhe hath loſt by Occaſion of the Award of the Execution aforeſaid, *&c.*

Of

Of Writs of Error, and Proceedings thereon in B. R.

A Writ of Error is a Writ iſſuing out of *Chancery*, that lies where any one is grieved by the Proceedings and Judgment in any Court of Record, having Power to hold Plea of Debt or Treſpaſs above 40 *s.* It is returnable in the *King's Bench*; and if upon the Tranſcript of the Record ſent into that Court, it appears to the Court that there is Error in the Record or Proceſs, or in giving of Judgment, then the Judgment is reverſed; but if there appear to be none, then is the Judgment affirmed with double Coſts. 1 *Lill. Pract. Reg.* 518.

An erroneous Judgment given in *B. R.* was only reformed by the Parliament till the Stat. 27 *Eliz. c.* 8. By that Statute, a Writ of Error lies out of the *Chancery* upon all Judgments given in the *King's Bench*, when the Suit is by Bill, (unleſs the King is Party thereto) returnable in the *Exchequer Chamber*, before the Judges of the *Common Pleas* and Barons of the *Exchequer*, *&c.* who may examine the Errors, and reverſe or affirm the Judgment; other than for Errors concerning the Juriſdiction of the Court, or want of Form in Writs, Pleadings, *&c.* and after the Errors are examined, and Judgment affirmed or reverſed, the Record is ſent back to the *King's Bench*, to proceed and award Execution: But if the Suit is by Original, or on a *Qui tam*, *&c.* where the King is Party, Writ of Error lies only to the Parliament. A Judgment given in the *Common Pleas* is to be reverſed

reverſed by Writ of Error made returnable in the *King's Bench*; and Error ſhall not be brought in Parliament: Tho' where a Writ of Error is brought in *B. R.* upon a Judgment given in *C. B.* and the Judgment is reverſed or affirm'd, the Party grieved may have Writ of Error returnable in Parliament. Erroneous Judgment in the Court of *Exchequer* is to be examined by the Lord Chancellor, *&c.* with ſome of the Juſtices, and ſuch other ſage Perſons as they think fit; and if any Error be found, they ſhall correct the Rolls, and ſend them into the *Exchequer*, there to make Execution, *&c.* Stat. 27 *Eliz. cap.* 8. 31 *Eliz. c.* 1. 31 *Ed.* 3. *cap.* 12. 1 *Lill. Reg.* 519, 521.

The Writ of Error may not be brought in the *Exchequer Chamber* upon a Judgment in *B. R.* but in Actions of Debt, Detinue, Treſpaſs on the Caſe, Covenant and Ejectment, which are the Actions mentioned in the Statute 27 *Eliz. c.* 8. And that Statute is only to relieve on the Merits of the Cauſe, as it ſtood on the firſt Judgment, and there can be no new Writ of Error after that Judgment is affirmed or reverſed; ſo that if the Merits of the firſt Judgment be examined before a *Scire Facias* is brought, the Exchequer Chamber having executed their Authority, can do nothing in it: And the Court of Exchequer Chamber have not any Power but to reverſe or affirm the Judgment, *&c.* for they cannot make Execution. But where a Judgment is given for the Defendant, and the Plaintiff brings a Writ of Error; if the Judgment is reverſed, the Court which reverſes it ſhall give Judgment for the Plaintiff,

as

as the other Court ought to have done. 1 *Salk.* 263. *Cro. Eliz.* 108. *Yelv.* 117.

It is held, that not only on reverſing or affirming a Judgment, the Exchequer Chamber is to ſend back the Record into *B. R.* but alſo if the Plaintiff in the Writ of Error is Nonſuit, or if the Suit is diſcontinued in the Court of Exchequer Chamber, the Record ſhall be ſent back; and then the Exchequer Chamber ſhall give Coſts and Damages to the Plaintiff in the original Action for his Delay, *&c.* tho' if the Plaintiff in Error was Plaintiff in that Action, there no Coſts ſhall be given. In the Exchequer Chamber, after Reverſal of a Judgment in *B. R.* the Court gave Judgment, that the Plaintiff ſhould recover, *&c.* but becauſe they wanted Power to award a Writ of Inquiry which was neceſſary, it being on a Demurrer, therefore it was ſent back into *B. R.* for the Execution of that Writ, and thereupon to give final Judgment: Tho' if the Judgment is againſt the Plaintiff in *B. R.* upon a Special Verdict, and that Judgment is reverſed in the Exchequer Chamber, there being no Writ of Inquiry requiſite in the Caſe, the Court of Exchequer Chamber may give a compleat Judgment for the Plaintiff in the Action, as well as Judgment of Reverſal. 2 *Anderſ.* 122. *Carthew* 181. 2 *Nelſ. Abr.* 707.

The Reverſal in the Exchequer Chamber is *Res Judicata*; no Writ of Error lies on ſuch Judgment, except in Parliament, and it is to be by ſix Judges at leaſt, by the Statute 27 *Eliz.* c. 8. and 31 *Eliz.* But it hath been reſolved, that Errors in Fact cannot be aſſigned in the Exchequer Chamber; yet by ſome Authorities they

they may be assign'd as Errors in Law: And according to later Resolutions the Court of Exchequer may by Virtue of this Statute reverse Judgments for Errors in Fact. If erroneous Judgment be had by Consent of Parties, it may be reversed in the Exchequer Chamber, for such Consent shall not change the Law; but if the Consent is entered of Record it may be good. 2 *Lev.* 38. *Cro. Eliz.* 664, 731. *Hob.* 5. *W. Jones* 410. 2 *Mod.* 194.

In an Action of Replevin, this Writ in the Exchequer Chamber will not lie to reverse the Judgment, being *Casus omissus* out of the Act: But on Judgment in Replevin in *C. B.* there may be a Writ of Error brought in *B. R.* It lieth not likewise in an Action of Rescue, which is not mentioned in the Statute; nor in Action of *Scandalum Magnatum*, because it concerns the King; or on any Judgment affirmed upon a Writ of a Error in the King's Bench; or had on a *Scire Facias*, sued out thereupon. Tho' it is said, Writ of Error lies in the Exchequer Chamber upon a Judgment on a *Scire Facias* against Bail, which is grounded on an Action of Debt; and in Debt upon the Statute for not setting out Tithes, *&c.* 2 *Roll. Rep.* 438. *Cro. Jac.* 171. *Cro. Car.* 135. 2 *Bulst.* 162. *Cro. Eliz.* 730. 1 *Sid.* 240.

If Judgment be given in the Court of King's Bench, in Civil Actions, a Writ of Error lies not in the same Court, only for Errors in Fact triable by a Jury; but upon a Judgment in Criminal Cases, Error will lie in *B. R.* whether the Error be in Fact or in Law; tho' it lies also in Parliament. And the Writ of Error *de Recordo quod coram vobis Residet* lieth in the Court

Court of *B. R.* for Errors in Fact, in the Judgment of the ſame Court; as for Nonage of the Parties, Want of an Original, or other Matter which doth not proceed from any Error of the Judges in giving their Judgments; and it is allowed without Bail: Tho' a Writ of Error of this kind doth not lie for Matter of Law, for that would be to reverſe their own Judgments. In *C. B.* Errors in Fact may be corrected the ſame Term, without this Writ; which lieth not in the Exchequer Chamber. 3 *Salk.* 147. *Cro. Jac.* 254, 620.

Where a Writ of Error is abated or quaſhed for any Defect, *&c.* if the Record be well removed into *B. R.* the ſuperior Court ſhall proceed thereupon; and a Writ of Error *quod coram vobis reſidet* will lie: And if a Stranger brings Writ of Error, and the Record is removed, and after he is Nonſuited; here another who hath good Cauſe may bring his Writ of Error *quod coram vobis, &c.* Alſo if a Writ of Error be diſagreeable to the Record of the Judgment, or otherwiſe bad; yet if the Record be removed by it, another Writ *quod coram vobis reſidet* lies: But where a Writ of Error ſhall abate for a Miſtake of the Name of either Party, or of the Damages, or the Plaint below is miſrecited, *&c.* that the Record is not well removed, this Writ will not lie. 1 *Roll. Abr.* 753, 754. *Stiles* 470. *Latch* 198. 3 *Lev.* 107. 2 *Bulſt.* 170.

The want of a Bill in *B. R.* is Error upon an Judgment by Confeſſion, or Default, (but not after a Verdict) becauſe the Bill is the Original Proceſs there: And where Proceedings are ſo Erroneous, as not to be amended; for Faults in Verdicts, Executions, *&c.* and when any Thing

Material

Material is omitted in a Judgment, Writ of Error lieth, and the Judgment shall be reversed: So where the Stiles of inferior Courts are wrong or insufficiently named, *&c.* 1 *Lill. Reg.* 518. 2 *Nelf. Abr.* 714, 721, *&c.* But when Faults are small, they sometimes pass as *virium Clerici*: And by a late Statute it is enacted, That all Writs of Error, wherein there shall be any Variance from the original Record, or other Defect, may be amended and made agreeable to the Record, by the Courts where such Writs of Error shall be made returnable; and where any Verdict hath been given in any Action, *&c.* in any of his Majesty's Courts at *Westminster*, or other Court of Record, the Judgment thereon shall not be reversed for any Defect or Fault in Form or Substance, in any Bill, Writ, *&c.* or for Variance in any such Writs from the Declarations or other Proceedings. *Stat.* 5 *Geo.* 1. *c.* 13.

Writ of Error cannot be brought on any Record which is not a Judgment; it lies not on an interlocutory Judgment, but it must be a final Judgment after Verdict, *&c.* A Writ of Error may not be had to reverse a Judgment by Default, before a Writ of Inquiry of Damages issues and is executed, that the Verdict of the Jury and interlocutory Judgment may be made a perfect final Judgment, upon which alone the Writ of Error is to be brought: But on Judgment by Default in Ejectment, it lies before a Writ of Inquiry of Damages, and Judgment thereupon; because in this Case the Judgment already is perfect to recover the Term. Where a Judgment is pleaded, in Bar of another Action, *&c.* and Judgment given on that Plea;

Writ of Error may be had to reverſe the ſecond Judgment. 1 *Saik.* 141. 1 *Lill. Reg.* 522. *Latch* 212. *Jenk. Cent.* 259.

The Chief Juſtice of the King's Bench, *&c.* or the eldeſt Judge ought to allow a Writ of Error; which is in Judgment of Law a *Superſedeas* until the Errors are examined, and the Judgment affirmed or reverſed: If the Judgment is reverſed, the Plaintiff may bring a new Action for the ſame Cauſe; and Debt lies upon a Judgment in *B. R.* after a Writ of Error brought, that being only a *Superſedeas* to the Execution. When a Writ of Error is brought to reverſe a Judgment in an inferior Court, tho' the Record is not certified as it ought, yet Execution cannot be ſued; but on Certificate of the Neglect therein, *&c.* a Writ of *Executione Judicii* may be iſſued: If Judgment be for the Defendant in ſuch inferior Court, and it is reverſed in *B. R.* the Plaintiff ſhall have Judgment; but if the Merits appear againſt the Plaintiff, the Defendant ſhall have new Judgment; for the Judges are to reform, as well as to affirm or reverſe. *Cro. Jac.* 534. *Cro. Eliz.* 503. 1 *Lev.* 153. 1 *Lill. Reg.* 526. *Fareſt.* 2, 3.

Any Perſon damnified by Error in a Record, or that may be ſuppoſed to be injured by it, may bring Writ of Error to reverſe the Judgment, whether he be Party or no; and no Perſon can reverſe a Thing for Error, unleſs it be to his Prejudice: One in Remainder may have a Writ of Error upon Judgment given againſt Tenant in Tail; tho' he in Reverſion or Remainder ſhall not bring this Writ in the Life-time of Tenant for Life, on Judgment given againſt ſuch Tenant, becauſe they cannot

be

be Parties grieved in his Time. Principal and Bail cannot join in a Writ of Error: And if two Plaintiffs are barred by an erroneous Judgment, and afterwards they bring Writ of Error, the Releaſe of one ſhall be a Bar to the other, for here they are both Actors in a Perſonal Thing to charge another: But where the Defendants bring a Writ of Error 'tis otherwiſe; as it is brought to diſcharge themſelves of a Judgment, the Releaſe of one cannot bar the other, becauſe they have not a joint Intereſt, but a joint Burden, and by Law are compellable to join in Errors. Where there are ſeveral Defendants, if one of them releaſe the Errors, he may be ſummoned and ſevered, and the others may reverſe the Judgment. 6 *Rep.* 26. *Hob.* 72. 5 *Rep.* 38. 2 *Nelſ. Abr.* 712. 3 *Mod.* 135.

He that brings a Writ of Error to reverſe a Judgment given in a ſuperior Court, by the Statute 3 *Jac.* 1. *c.* 8. In all Caſes after a Verdict; and in all Actions of Debt by Confeſſion or Default; and Actions of Debt upon a Bond for Payment of Money only, muſt put in good Sureties to proſecute the Writ of Error, and pay the Debt and Damages in Caſe Judgment be affirmed: But inferior Courts, as well upon Verdicts, as other Judgments by Default, *&c.* have their Writs of Error allowed without putting in Bail, for they are omitted out of the Statutes. If Bail be not put in, on Writ of Error brought upon a Judgment in the Courts at *Weſtminſter*, the Writ of Error is no *Superſedeas* to the Execution; tho' ſuch Writ is in Being until a *Nolle proſequi* is entered, or Judgment affirmed, *&c.* and it is the ſame where inſufficient

insufficient Bail is given, on Rule to put in better Bail, or justify those put in; which if the Plaintiff in Error doth not do, Execution is ordered upon the Judgment, with a *Non obstante* to the Writ of Error, &c. 1 *Lill. Reg.* 351. *Mich.* 9 *W.* 3. *B. R.*

The Party bringing Writ of Error is to cause the Roll, where the Judgment is entered, to be mark'd with the Word *Error* in the Margin, that the other Party may have Notice on the Record that the Writ of Error is brought; and this Marking of the Roll, on giving Notice thereof, is as it were a *Supersedeas* in it self to hinder Execution: Yet a *Supersedeas* must be made out, allowed with the Sheriff of the County; and the Plaintiff's Attorney is not obliged to search the Record, whether Writ of Error be brought or not, but may make out Execution upon the Judgment, if no *Supersedeas* be taken forth, or he have no Notice of the Writ of Error. *Trin.* 24 *Car. B. R.*

A Plaintiff in Error, in the Time appointed by the Rule for that Purpose, is to certify the Record into *B. R.* or the Court will grant a *Nolle prosequi* on the Writ of Error: And Writs of Error remove only the Record and Process; not the Original, which remains filed with the *Custos Brevium*. If a Writ of Error is brought to remove a Record of a Judgment given in *C. B.* and the Plaintiff in Error leaves the Record there, without removing it before the Return of the Writ; or in Case there be a longer Return-Day than is usual in the Writ of Error, as if it be purchased the beginning of *Michaelmas* Term, and made returnable in *Hillary* Term; the Court may award Execution, altho'

the Writ of Error be delivered: But if a Writ of Error to reverſe a Judgment be diſcontinued for want of Proſecution; Execution cannot be had upon the Judgment, until the Diſcontinuance is certified from the Court where diſcontinued. *Mich.* 22 *Car. B. R. Jenk. Cent.* 25, 180. 1 *Lill.* 518.

In a Writ of Error, when the Record comes into Court, if the Plaintiff all that Term do not aſſign his Errors; or if he do it, and omit to ſue a *Scire facias ad audiendum Errores*, againſt the Defendant in Errors, returnable the ſame Term, or the next, all the Matter will be diſcontinued; and the next Term after, a new Writ of Error is to be ſued out directed to the ſame Juſtices, *&c.* And if he, that brings Writ of Error, diſcontinues before the Defendant in the Writ of Error pleads to it, he may have a new Writ of Error; but if he diſcontinue after the Defendant hath pleaded *in nullo eſt Erratum*, he may not have a new Writ. After *in nullo eſt Errat.* pleaded, the Party Pleading affirms the Record to be perfect, and he is foreclоſed to ſay there is Error in it. *F. N. B.* 20. 1 *Lill. Reg.* 522. 1 *Salk.* 270.

On the Removal of the Record by the Writ of Error, the Parties have no Day in Court given to either of them; ſo that if the Plaintiff in Error delay to ſue forth his *Sci fac. ad audiend. Errores*, the Defendant hath no way to compel him, but by ſuing out a *Sci. facias quare Executionem non, &c.* and if thereupon the Plaintiff in Error doth not plead that his Errors are aſſign'd, but ſuffer Judgment to paſs upon two *Nihils*, no Errors afterwards aſſign'd ſhall prevent Execution: But 'tis ſaid the uſual

Practice

Practice is, that the Defendant in Error, by Conſent doth voluntarily take Notice of the Aſſignment of Errors; and this Conſent is teſtified by his Pleading *in nullo Erratum*; and then there is no Occaſion for a *Sci. fa. ad audiend. Error'*. Carthew's Rep. 41.

If one in Execution brings this Writ, he ought to aſſign the Errors in his proper Perſon; and in Caſes of Outlawry, *&c.* Errors muſt be firſt aſſigned and allowed, before the Writ of Error is granted. Where a Record is in Court by Writ of Error, the Plaintiff in Error is to aſſign Errors; and he may have a *Scire fac.* before the Record is entered: And the ancient Manner of aſſigning Errors, is to put a Bill into the Court, and ſay in the Bill *in hoc Erratum eſt, &c.* ſhewing in certain in what Things: The Aſſignment of Error, *in omnibus Erratum*, is not good; becauſe the Judgment is founded upon the original Writ, Declaration, Pleading, Iſſue, Proceſs, Trial, and ſo is manifold. Errors not aſſigned in the Record may be aſſign'd after a *Sci. fa. ad audiend. Errores*, as the Record is in Court; but it is not ſo of a Warrant of Attorney, which is not upon Record. *Jenk. Cent.* 179, 165. *F. N. B.* 21. *Jenk.* 84, 140. 5 *Rep.* 37.

The Aſſigning general Errors is to ſay, that the Declaration, *&c.* is not ſufficient in Law; and that Judgment was given for the Plaintiff, where it ought to have been for the Defendant: And the Errors of a Judgment are now to be aſſign'd on the Record, to appear to the Court: And it muſt appear in the Record, that Judgment was given for a Matter out of the Juriſdiction of the Court, for the Plaintiff to

aſſign that for Error; alſo that ſhall not be aſſign'd for Error which might have been pleaded to the Action. On Error brought, if the original Writ doth not abate by Death; but is abateable only, as by Entry into the Land pending the Writ, or Coverture, Acquiſition of a Dignity, a partial Array returned, Aid denied, &c. which might have been pleaded, but were not: Theſe ſhall not be aſſign'd for Error; for they are waved, becauſe no Exception was taken to the Writ. *Roll. Rep.* 50, 88. 9 *Rep.* 47. 21 *H.* 6. 29.

Where the Plaintiff in Error dies, the Writ abates; but 'tis ſaid not where the Defendant dies: And by 30 *Car.* 2. *c.* 6. In Actions Real, Perſonal and Mix'd, the Death of either Party between Verdict and Judgment ſhall not be alledged for Error, ſo as the Judgment be entered within two Terms after the Verdict. Nothing can be aſſign'd for Error, which is not in the Court where the Writ of Error is brought: For if a Man recovers, and hath Judgment in a *Sci. fa.* upon the firſt Judgment; if then a Writ of Error be proſecuted on the Judgment upon the *Scire facias* only, the Party can't aſſign Error in the firſt Judgment, becauſe that was not before the Court. A Perſon cannot aſſign that for Error, which is contrary to the Record; and a Matter againſt the Certificate of the Juſtices of Record may not be aſſigned. *Yelv.* 112. *Fitz. Error* 63. 1 *Roll. Abr.* 760.

If a Man pleads *in nullo eſt Erratum*, it is a Confeſſion of a Fact well aſſign'd; but not of a Matter contrary to the Record: And if what is aſſigned for Error, ſuppoſing it to be true, (as

it

it is made so by Pleading this Plea) is a Bar to the Plaintiff's Action, the Judgment shall be reversed. A Plaintiff in Error assigns the general Errors, and further that the Defendant being an Infant appeared in the Court below by Attorney, when he was an Infant; and the Defendant in Error pleads *in nullo est Erratum*; here such Defendant shall not have any Advantage of the Assignment of Errors being double, in as much as he acknowledges himself to be within Age: And a Judgment given in the inferior Court was thereupon reversed accordingly. *Cro. Jac.* 12. 511. 1 *Lev.* 274. *Raym.* 231. *Mich.* 11 *Car. B. R.* 1 *Roll. Abr.* 761.

'Tis generally held, that one shall not assign any Matter for Error that was to his Advantage; but if the Error arises by the Default of the Court, he may assign Matter for Error that was an Advantage to him: And where a Judgment wants somewhat to make it compleat, as the Want of the Warrant for his own Attorney to defend; in this Case, altho' it be his own Default, he may assign it for Error. If the Plaintiff in the Writ of Error assigns an Error in Fact, and the Defendant will put the Truth of it in Issue, he ought to rejoin by a Denial of the Fact, and not to plead *in nullo est Erratum*: But when such Error is assign'd, if the Defendant will acknowledge the Fact to be as alledged, but that by Law it is not Error, then he should rejoin *in nullo est Erratum*. And this puts the Matter in the Judgment of the Court. 5 *Rep.* 39. 8 *Rep.* 59. 1 *Roll. Abr.* 759, 760, 763. *Dyer* 3.

If any Error is alledged in a Matter of Record, this is a good Rejoinder; for if the Plain-

tiff in Error doth not alledge *Diminution*, and pray a *Certiorari*, and get it returned that such a Thing is wanting, before the Rejoinder of *in nullo est Erratum* is entered; the Assignment of such Defect is of no Force, but void, because this is to be try'd by the Record it self, and no Diminution can be alledged after such Rejoinder entered. In some Cases, Diminution hath been alledged, after *in nullo est Erratum* pleaded, *ex gratia Curiæ*; though not *ex rigore Juris*: And the Court in such Case hath awarded a *Certiorari*, to inform their Consciences of the Truth of the Record in *C. B.* So to amend the Record; and so 'tis said to reverse the Judgment: And if another Part of the Record is brought in by *Certiorari*, and made of Record; there the Court ought to reverse the Judgment, if the Matter so requires. 9 *E.* 4. 32. 1 *Roll. Abr.* 764. *Palm.* 85. 5 *Rep.* 37. *Roll. Rep.* 413. 3 *Bulst.* 224.

Of course Diminution is to be certified on a Writ of Error; and if Issue be joined upon the Errors assigned, and the Matter is entered upon Record, then there must be a Rule of Court granted for a *Certiorari* to certify Diminution: But Diminution cannot be alledged of a Thing which is fully certified, or contrary to the Record; only where Part of the Record is omitted to be certified, so that something is wanting, as Want of an Original, or a Warrant of Attorney, &c. And if on Diminution alledged, the Plaintiff in Errors certify one Original, &c. which is wrong, and the Defendant in Error certifies another that is true; the true one shall stand. Upon a *Certiorari* granted, an erroneous Original is return'd; after the Court *ad informandam*

mandam Conscientiam may grant another *Certiorari* for another Original; and if upon this a good Original is certified, the Court ought to intend it to be that upon which the Judgment was given, in Favour of Judgments, and affirm the same. 1 *Lill. Reg.* 255. 2 *Lev.* 206. *Cro. Jac.* 597. *Cro. Car.* 91. 1 *Roll. Abr.* 765.

After Judgment in *B. R.* a Writ of Error was brought, and Want of Continuances being assign'd for Error; upon a *Certiorari* the Want of Continuances was certified; yet after upon another *Certiorari* the Continuances were certified; and upon this the Judgment was affirmed. Altho' a Defendant in Error cannot come and alledge Diminution; where the Court by Inspection of the Record may affirm the Judgment, they may award a *Certiorari* to inform the Conscience of the Court, notwithstanding the Party himself cannot pray a *Certiorari*: But it is said, that if Infancy be assign'd for Error, or a Matter of Fact which doth not appear upon the Face of the Record; there the Court must go on to determine the Writ, and whether there be Error in the Record or not. No Diminution can be alledged of Records out of inferior Courts; but the Court is to take them as they find them: Tho' it may be alledged upon a Writ of Error on a Judgment in *Wales*, and the Counties Palatine; and upon Writs of Error upon Judgments before Justices of *Oyer and Terminer*, &c. 1 *Roll. Abr.* 765. 1 *Salk.* 270, 266. 1 *Sid.* 147, 40.

The Judges are not bound to search for Errors in the Record, which were not assign'd; but may if they will; and if they find Error, they ought to reverse the Judgment. But a Judg-

ment can't be reverſed in Part, and affirmed as to other Part; or be reverſed as to one Party, and ſtand good againſt the Reſt: Tho' if there be Error in awarding Execution, the Execution only ſhall be reverſed, and not the Judgment. For the Judgment is an entire Thing, and therefore if it is erroneous as to any Part, the entire Judgment muſt be reverſed. If Judgment is entered againſt joint Defendants, when one of them is dead, the Judgment ſhall be reverſed for Error as to all of them; in ſuch Caſe the Plaintiff ought to make a ſpecial Entry of the Death of the Party, with *nihil ulterius verſus eum fiat*, and then take Judgment only againſt the others. *Jenk. Cent.* 159. *Hob.* 90. *Carthew* 235, 149.

Writ of Error may be ſued in the King's Bench here, on a Judgment given in the Court of King's Bench in *Ireland*, after Error brought and determined there. 2 *Nelſ.* 730. A Writ of Error lies in *B. R.* to reverſe a Fine levied in the *Common Pleas*, and to cancel the ſame if it be erroneous: And if there be not an Original; or not proper Writs of Covenant, or if there be any Fraud, *&c.* Writ of Error may be brought to make the Fine void. 1 *Inſt.* 9. But no Fine or Recovery, nor any Judgment in a Real Action, *&c.* ſhall be reverſed for Error, except the Writ of Error be commenced within twenty Years, ſaving the Right of Infants, *&c.* Stat. 10 & 11 *W.* 3. *c.* 14.

The Court will not let the Plaintiff in Errors quaſh his own Writ of Error; tho' they may grant Leave to diſcontinue it. By 3 *H.* 7. *c.* 10. where any Perſon bound by a Judgment ſhall before Execution had ſue a Writ of Error to

reverſe

reverſe it; if the Judgment be affirm'd, or the Writ diſcontinued, &c. the Defendant in Error ſhall recover his Coſts and Damages; it being in Delay of Execution: But if the Writ of Error is brought after the Execution executed, to have Reſtitution, the Defendant in Error (who is Plaintiff in the original Action) ſhall not have Coſts; becauſe the Writ in that Caſe cannot be ſaid to be *in dilatione Executionis*. And no Coſts are to be allowed where the Defendant in Error does not appear to the *Scire facias*, but is *non-pros'd* for not appearing. 5 *Mod.* 67. *Cro. Jac.* 636. *Raym.* 134.

Before the 8 & 9 *W.* 3. *c.* 11. If the Defendant had Judgment in *C. B.* and the Plaintiff in that Action brought a Writ of Error; and the Judgment for the Defendant was affirmed, he could have no Coſts; for the Writ of Error could not be ſaid to be in Delay of the Execution: But by that Statute, if any Perſon ſhall commence any Action or Suit in any Court of Record, wherein upon a Demurrer Judgment ſhall be given againſt the Plaintiff or Defendant; or if at any Time after Judgment given for the Defendant, the Plaintiff ſhall ſue a Writ of Error, and the Judgment ſhall be affirm'd, or the Writ diſcontinued, or the Plaintiff Nonſuited, the Defendant in the Action ſhall have Judgment to recover his Coſts againſt ſuch Plaintiff, and Execution by *Capias ad Satisfaciendum*, *Fieri Facias*, or *Elegit*. Exemplary Coſts are given by the Parliament, amounting to a very large Sum, on a Writ of Error brought there only to delay the Plaintiff in the Action.

When

When Judgment is given in *B. R.* for the Plaintiff in Errors, there ſhall be only a *Judicium Revocetur, &c.* entered, with Coſts: If for the Defendant in Errors, that the Plaintiff *Nil capiat per Breve ſuum de Errore, &c.*

To ſue out a Writ of Error *in the* King's Bench, *on a Judgment in* C. B. *the Method is thus:*

THE Plaintiff having obtained Judgment in the *Common Pleas*, by Verdict or Default, the Defendant's Attorney is to leave a *Præcipe* or Copy of the Declaration with the Curſitor of the proper County, as Inſtructions for him to make out the Writ of Error, for which when ſealed, he is to pay Thirteen Shillings; and muſt carry it to the Clerk of the Errors in the *Inner-Temple*, for him to allow it, who is to be paid Two Pounds two Shillings and ſix Pence, and he gives you a Certificate of the Allowance, a Copy of which muſt be forthwith ſerved on the Plaintiff's Attorney; and if the Execution be not ſerved, it then becomes a *Superſedeas*: But if the Attorney for the Plaintiff, before receiving ſuch Allowance of the Writ, has made out Execution, and delivered the ſame to the Sheriff, ſo that he is going on to execute his Writ; then the Clerk of the Errors will make out one or more Writs of *Superſedeas*, which muſt be allowed with the Sheriff of the proper County, and he will return it on the Execution; but if executed it comes too late.

In

In Caſe the Plaintiff's Attorney neglects to ſign Judgment, in order to defeat the Defendant of the Benefit of his Writ of Error, the Court, or a Judge at his Chambers, if in Vacation, may oblige him to enter up his Judgment; or will make him ſue out a Writ of Error at his own Expence: And when the Defendant's Attorney in Error has carried in the Roll, if the Plaintiff's Attorney in Error knows of any Error upon the Face of the Record, he is to examine the Roll by the Iſſue delivered; and if it varies from it, or from the Declaration where the Judgment is by Default, he muſt apply to the Court of *Common Pleas*, and move that the Defendant's Attorney in Error may make the Roll agreeable to the Declaration or Iſſue ſo delivered; and then move the Court of *King's Bench* that the Tranſcript be made to agree with the Roll; otherwiſe that which the Plaintiff's Attorney in Error was adviſed to be erroneous, will appear right upon the Record, and the Judgment will be affirmed, for the Court of *B. R.* are to judge from the Record, as it ſtands there.

After a Writ of Error is brought, the Plaintiff's Attorney in the Action below, muſt procure an Original to warrant his Judgment, which is to be of the ſame Term with the Judgment; but the Court of *Chancery ex gratia* gives Leave to the Attornies to beſpeak their Originals at any Time within ſeven Days from the Firſt Day of the ſucceeding Term, after the Judgment obtained; afterwards on a Writ of Error brought, the Curſitor will not make it out, and in that Caſe an Original upon a Petition to the Court of *Chancery* has been denied.

Alſo

Alſo Care muſt be taken that the Warrants of Attorney are filed; and in Caſes required, Bail muſt be put in, which Bail are bound that the Defendant in the Action, now Plaintiff in Error, ſhall proſecute his Writ of Error with Effect, and ſhall pay the Money if the Judgment be affirm'd, or they will do it for him: And the Manner of putting in this Bail is as follows; the Defendant's Attorney in the original Action, having allowed his Writ of Error, is to get the Clerk of the Errors to carry his Bail-Book to one of the Judges of the *Common Pleas*, and there the Bail enter into a Recognizance in double the Sum recovered; and the Clerk of the Errors firſt enters a Note of this Recognizance in his Book. And twenty Days are allowed to except againſt the Bail, which is done by the Defendant's Attorney in Error taking out a Rule, and ſerving it on the Plaintiff's Attorney, to put in better Bail.

When the Attorney for the Defendant in Error has Notice of the Writ of Error and Bail, he is to carry his Roll to the Prothonotaries Office, and there Docquet it, and get the Clerk of the Judgments to enter up the final Judgment; and then carry it to the Clerk of the Errors, who having tranſcribed the Record from thence, tranſmits it to the Court of *King's Bench*, and leaves it at the King's Bench Office: Then the Defendant's Attorney is to ſue out a *Scire facias* to aſſign Errors, which muſt be ſerved on the Plaintiff in Error, by Delivery of a Notice to him; and this is done by the Sheriff's Officer: And if the Sheriff doth not ſummon the Plaintiff in Error on the firſt *Sci. fa.* but returns a *Nihil* thereon, you muſt make

out

out an *Alias Sci. fac.* returnable fifteen Days after the Return of the first; upon which last, you are to get the Sheriff to return a *Nihil*, and these two *Nihils* so returned, amount in Law to a *Scire feci.*

Next to this, the Defendant in Error must enter a Rule with the Clerk of the Rules, for the Plaintiff to appear within four Days and assign Errors, of which Rule no Service need be made; and if he does not, the Defendant is to take out another Rule, for the Plaintiff in Error, to assign Errors *de Recordo* in four Days more; and then if the Errors are not assigned within the Time, the Defendant in Error having in his Custody the Transcript, may have a *Non pros.* which is signed by the Master of the *King's Bench*: This last Rule must be drawn up and served, as other Rules; but the first is never drawn up, but given in the Manner as a Rule upon other Writs of *Scire facias.* If the Plaintiff in Error assigns the general Errors; and the Defendant's Attorney is assured that the Writ of Error is meerly for Delay, and there is nothing wanting to compleat the Judgment, he is to deliver to the Plaintiff's Attorney a Plea of *in nullo est Erratum*; but if the Error assign'd be Special, or Matter of Fact, he must not Plead this Plea.

After the Defendant's Attorney hath joined in Error, he must move the Court, that the Cause may be made a *Consilium*; which is a Prayer that the Court will advise themselves concerning this Cause, and appoint a Day for the Parties to hear Judgment: And the Rule for a *Consilium* is to be drawn up with the Clerk of the Rules, for which you pay him

Three

Three Shillings; and formerly it uſed to be ſerved on the Attorney for the Plaintiff in Error, but now he is to attend it himſelf; and it is properly his Buſineſs, but only the Defendant in Error does it that there may be no Delay. When the Rule is drawn up, the Defendant in Error is to enter the Cauſe in the Paper of Cauſes, with one of the Clerks of the Papers, to whom it properly belongs; and you pay One Shilling for ſetting down the Cauſe for Argument.

When the Cauſe is ſet down to be argued in the Paper of Cauſes, the Attorney for the Defendant in Error, muſt get one Paper-Book ingroſs'd for his Counſel to argue from; and ſo likewiſe the Attorney for the Plaintiff in Error, who is to leave Two Copies thereof with the Two Senior Judges; and the Defendant's Attorney Two with the Two puiſne Judges of the Court, two Days before the Day of Argument: But if the Plaintiff's Attorney in Error neglects to leave Two Books, one with the Chief Juſtice, and the other with the Senior Judge, it will be neceſſary for the Defendant in Error to get Two more Copies ready for the ſaid Senior Judges; with each of which Paper-Books the Parties pay Two Shillings to the Judge's Clerk; and then it is ſaid the Plaintiff in Error cannot be heard: Alſo heretofore the Practice hath been, for the Defendant in Error to leave the four Paper-Books with the Judges; and if Judgment was affirm'd, the Defendant ſhould be allowed them in Coſts.

Things being thus prepared, the Defendant muſt be ready with his Counſel at the Day for which the Cauſe is appointed to be heard, to

pray that the Judgment be affirmed, or argue the Errors that will bear it; and the Defendant's Attorney is to take Care to have the Roll filed, and the File of Rolls brought into Court, if it be of the ſecond or third Term after the joining in Error; becauſe if it be produced without being filed, it is not taken by the Court to be a Record; and ſeveral Cauſes have gone over to another Term, by the Neglect of filing the Roll, before the Cauſe came on in the Paper; but 'tis otherwiſe where the Records of the Court are not filed and bundled up, as they are not in the ſame Term that the Errors are joined. And laſtly, if Matters of Fact are alledged in Error, on proper Pleading thereto, Iſſue is thereupon taken and tried as in any other Iſſue: But if only Matters of Law are aſſign'd, the Errors are argued by Counſel on both Sides, and the Judgment is either reverſed or affirmed.

When the Judgment is affirm'd, the Defendant in Error muſt draw up the Rule of Court to affirm the Judgment; and may proceed againſt the Defendant in the Action by taking out Execution on the *Affirmetur*, or bringing Action of Debt upon the Judgment; or may proceed againſt the Bail, by a *Scire facias* upon the Recognizance, tho 'tis ſaid no *Capias* lies againſt the Bail in this Caſe, for they only bind their Goods and Chattels, for Payment of the Condemnation Money.

Error assigned for want of Original, &c. and the Proceſs therein.

B. —— } A Fterwards, to wit, on *Friday* next
againſt } after the Morrow of the Holy
D. —— } *Trinity*, in this ſame Term, before the Lord the King at *Weſtminſter*, came the aforeſaid *A. B.* by, *&c.* his Attorney, and ſaith, that in the Record and Proceſs aforeſaid, and alſo in giving the Judgment aforeſaid, it is manifeſtly erred; in this, that is to ſay, that where by the Record aforeſaid it appears that the Judgment aforeſaid, in Form aforeſaid given, was for the aforeſaid *C. D.* againſt him the ſaid *A. B.* yet by the Law of the Land, of this Part of *Great Britain* called *England*, that Judgment ought to have been given for the ſaid *A. B.* againſt the ſaid *C. D.* and therefore in that it is erred: Alſo it is erred in this, that where by the Record and Proceſs aforeſaid, it appears that the ſaid *A. B.* appeared in the Plea aforeſaid by *G. T.* his Attorney, yet the ſame *G. T.* had no Warrant of Attorney of Record to appear for the ſaid *A.* at the Suit of the ſaid *C.* in the Plea aforeſaid, by Writ of the ſaid Lord the King, nor without the Writ of him the ſaid Lord the King; and therefore in that it is manifeſtly erred: Alſo it is erred in this, that where by the Record and Proceſs aforeſaid, it appears that the ſaid *C. D.* in the Plea aforeſaid, complains of the ſame *A. B.* by *W. J.* his Attorney, yet the ſaid *W. J.* had no Warrant of Attorney of Record to appear for the ſaid *C.* againſt the aforeſaid *A.* in the Plea aforeſaid,

by Writ of the ſaid Lord the King, nor without the Writ of the ſame Lord the King; and therefore, in that it is manifeſtly erred: It is alſo erred in this, that is to ſay, that by the Record aforeſaid it is certified, that the aforeſaid *A. B.* was attached to Anſwer to the ſaid *C. D.* of a Plea of Treſpaſs upon the Caſe, yet the ſaid *A.* ſaith, that there is no original Writ to warrant the Attachment aforeſaid, in the Declaration aforeſaid, ſpecified in the aforeſaid Record, remaining filed of Record in the aforeſaid Court of the ſaid Lord the King of the Bench; and therefore, in that it is manifeſtly erred: And the ſaid *A. B.* prays two ſeveral Writs of the ſaid Lord the King, that is to ſay, one to be delivered to *R. E.* Knt. Chief Juſtice of the ſaid Lord the King, of the Bench aforeſaid, and the other to be directed to, *&c.* Keeper of the Writs and Rolls in the Court of the ſaid Lord the King, of the ſame Bench, to certify more fully the Truth thereof to the Lord the King, in this Particular; and it is granted to him, *&c.*

In this Caſe, if the Judgment be obtained upon a Verdict, the Want of a Warrant of Attorney and Original is help'd by the Verdict: But if the Plaintiff in Error aſſigns his Errors in Manner aforeſaid, the Defendant may plead as follows:

Trinity *Term the 7th of King* George *the Second.*

B. and *D.* } In nothing it is erred.

By C. H. *paid* 2 *s.* 4 d.

AFTER this Plea Pleaded, the Defendant in Error is to move for a *Conſilium*, draw up the Rule, and enter the Cauſe with the Clerk of the Papers to be argued, *&c.* Tho' if the Judgment goes by Default, and the Plaintiff in Errors aſſigns his Errors as above, then the Defendant in Error muſt procure a Rule for the Plaintiff in Error to return his *Certiorari's*, and ſerve him with a Copy of it, which Rule is drawn thus:

Trinity *the 7th of King* George *the Second.*

} Wedneſday *next after fifteen Days from the Holy Trinity.* ___ *To Return ſeveral Writs of* Certiorari, *&c.*

THE *Certioraries* muſt be made out as prayed in the Aſſignment of Errors; and if the Error be for want of an Original, your *Certiorari* muſt be directed to the *Cuſtos Brevium*; and if for want of a Warrant of Attorney, to the Lord Chief Juſtice. Theſe *Certiorari's* are engroſſed on double 5 *s.* Stamps, and muſt be ſigned as a

Latitat,

Latitat, for which 1 *s.* 8 *d.* is paid for each, and 7 *d.* for Sealing, and then carried to the *Cuſtos Brevium* to be allowed and returned; for Allowance and Return whereof you pay 19 *s.* 4 *d.* When you have got the ſame allowed and returned, they are to be filed with Mr. *Hawley*, who ſigns the *Latitats*: And they are made in the following Form:

George the Second, *&c.* To our beloved and faithful *George Henry* Earl of *Lincoln*, Keeper of the Writs and Rolls in our Court of the Bench at *Weſtminſter*: We willing for certain Cauſes to be certified, whether a certain original Writ, between *A. B.* and *C. D.* of a Plea of Treſpaſs on the Caſe, to the Damage of him *A.* 100 *l.* be had under your Cuſtody of Record, or not; command you, that you ſearch the Writs Original and other *Memorandums* of the aforeſaid Court of the Bench, of *London* in *Michaelmas* Term, in the Sixth Year of our Reign, being filed under your Cuſtody: And what you ſhall there find of the Writ aforeſaid, between the Parties aforeſaid, together with the whole Return of the ſaid Writ, you certify without Delay to us, whereſoever we ſhall then be in *England*; and have you there this Writ. Witneſs *Philip* Lord *Hardwick* at *Weſtminſter* the Day, *&c.* in the Seventh Year of our Reign.

If there is an Original filed of *Trinity* Term, the Plaintiff in Error ſhould make out his *Certiorari* of *Eaſter Term*, &c. and get it returned that there is no Original of that Term; then the Defendant in Error muſt make out his *Certiorari*, and get it returned that there is an

Original filed of *Trinity* Term, and may Plead as above:

Trin. 7 G. R. *Secundi.*

D. against *B.* } It is erred in nothing.

By E. H. *paid* 2 s. 4 d.

THE *Certiorari* on the Part of the Defendant in Error is filed with the proper Perſon; and the Plea being pleaded, he may move *pro Conſil.* draw up his Rule, and enter the Cauſe to be argued. But if the Defendant in Error, after the Plaintiff in Error hath ſued out his *Certiorari*, and got it returned that there is no Original, and filed it as before directed, doth not ſue out his *Certiorari*, and Plead as above, then the Plaintiff in Error muſt ſue out a *Scire facias* to compel him, in this Form:

George the Second, *&c.* To the Sheriffs of *L.* Greeting: Becauſe in the Record and Proceſs, and alſo in giving Judgment of the Plea, which was in our Court of the Term of, *&c.* in the Sixth Year of our Reign, before *R. E.* Knt. and his Companions our Juſtices of the Bench, by our Writ between *A. B.* and *C. D.* of a certain Treſpaſs on the Caſe, done to the ſaid *A.* by the ſaid *C.* to the Damage of the ſaid *A.* 100 *l.* as it is ſaid, there intervenes manifeſt Error, to the great Damage of the ſaid *C. D.* as from his Complaint we have received Information; which

which ſaid Judgment, and the Record and Proceſs thereof, we for certain Cauſes have lately made to come before us: And we willing that the Error, if any be, may be corrected in due Manner, and that full and ſpeedy Juſtice be done to the Parties aforeſaid, in this Behalf; do command you, that by honeſt and lawful Men of your Bailiwick, you cauſe it to be known to the ſaid *A. B.* that he be before us on the Day, *&c.* whereſoever we ſhall then be in *England*, to hear the Record and Proceſs aforeſaid, if he think it expedient ſo to do, and further to do and receive what our Court before us ſhall conſider of in that Particular; and have you there the Names of thoſe by whom you ſhall ſo cauſe it to be known to him, and this Writ. Witneſs *Philip* Lord *Hardwick* at *Weſtminſter*, the Day, *&c.*

Ventris.

This Writ of *Scire facias* being returned by the Sheriffs, that by honeſt and lawful Men of their Bailiwick, they had cauſed it to be known to the Party to be before the Lord the King, at the Day, *&c.* The Defendant in Error ſues out his Writ of *Certiorari*, and Pleads, and the Errors are argued and determined; whereupon the Judgment before given is affirmed or made void, and Execution granted, *&c.*

To sue a Writ of Error *in the* Exchequer Chamber *on a Judgment in* B. R.

IF the Defendant in the original Action in the *King's Bench* brings a Writ of Error in the *Exchequer Chamber*, no *Scire fac.* is to be sued out and served as in *B. R.* upon a Judgment in *C. B.* But when the Writ of Error is sealed, the Defendant (now Plaintiff in Error) is to get his Writ allowed with the Clerk of the Errors in the *King's Bench*, who or his Deputy generally attends at the King's Bench Office; and having paid for the Allowance, the Defendant in Error gives a Rule with the Clerk of the Errors to transcribe the Record, and when that is done, the Plaintiff's Attorney in Error must leave Money with the Clerk of the Errors in the King's Bench to transcribe according to the Length of the Record; and then he sets about transcribing it, which he usually takes a Term to do it in.

When the Record is transcribed, the Clerk of the Errors in *B. R.* sends to the Plaintiff's Attorney in Error, to come and pay him the Rest of the Money for doing the same; which if he refuse to do, the Clerk of the Errors will then sign a *Non pros.* whereby the Defendant in Error is at Liberty to take out Execution: But if he pays for the Transcript of the Record, then the Clerk of the Errors in the King's Bench delivers over the Transcript to the Clerk of the Errors in the *Exchequer Chamber*, and he gives a Rule of that Term it comes in to alledge Diminution; and the next Term he issues a

Rule

Rule to assign Errors, neither of which Rules require to be served; and if no Errors are assign'd, the Clerk of the Errors in the *Exchequer Chamber* signs a *Non pros.*

If any Special Errors are assign'd, and the Plaintiff in Error intends to argue them, he must give ten Days Notice thereof to the Clerk of the Errors in the Exchequer Chamber; and then the Chief Justice of the Common Pleas is to be waited on by the Clerk of the Errors, to know what Day he will please to appoint to argue the Errors; and the Chief Justice having appointed a Day for that Purpose, the Clerk of the Errors there gives Notice to the Barons of the Exchequer of the Day and Place, which is generally *Serjeants Inn* Hall; and upon the Day appointed, the Errors are argued before the Barons of the Exchequer and Two of the Judges of the Common Pleas; or if all the Barons are not there, then two or three or all the Judges of *C. B.* must sit with them, so as to make up Six of the Judges and Barons of the Degree of the Coif, the Number ordained by Statute to hear Errors in the Exchequer Chamber; and the Defendant in Error gets the Clerk of the Errors to set down the Cause in the Paper of Errors, and on the Paper-Day, the Court of Exchequer, and the Judges who sit upon the Errors, confirm or reverse the Judgment.

Then the Attorney for the Defendant, or Plaintiff in Error, according as the Judgment is either affirmed or reversed, gets the Clerk of the Errors to enter up the *Affirmetur* or Reversal; and then he remits it back to the Clerk of the Errors in the King's Bench, to be entered

up at the End of the Judgment there, and, as the Caſe is, to award Execution or Reſtitution. By the *Orders* of *B. R.* the Clerk of the Errors in the Exchequer, is to allow Writs of Error within four Days after Notice given to the Plaintiff's Attorney; and Bail ſhall be put in within four Days after their Allowance: Alſo Copies of the Paper of Errors are to be delivered to the Juſtices of *C. B.* and Barons of the Exchequer four Days before Hearing, *&c.*

And it is ſaid, there are but two Days in every Term on which Writs of Error are returnable in the Exchequer Chamber; one whereof is towards the Beginning, and the other near the End of the Term, and are appointed by the Barons; and thoſe Days are generally the Paper-Days, for the Barons and Judges to confirm or reverſe Judgments brought before them by theſe Writs of Error.

There may be an *Adjournment into the Exchequer Chamber* of Cauſes to be determined by all the Judges of *England*; and this is where the Judges of the Court of King's Bench, *&c.* are divided in Opinion, two againſt two, upon a Demurrer or Special Verdict, not on a Motion only, when the Cauſe muſt be adjourned into the Exchequer Chamber: And a Rule is to be made out for this Purpoſe, and the Record certified, *&c.*

A Writ of Error in Parliament *is brought in the following Manner:*

WHEN you would bring a Writ of Error in *Parliament* to reverſe a Judgment in *B. R.* there muſt be a Petition to the King for his Warrant, which Petition has the Allowance of the Attorney General, and then the King writes on the Top of it *Fiat Juſtitia*, whereupon a Writ of Error is made out, *&c.* But you may leave the Inſtructions with the Curſitor, and he will get a Warrant from the King and the Writ ſealed; for which and the Writ you pay Six Pounds one Shilling and ſix Pence, and then you are to get it allowed with the Clerk of the Errors in the King's Bench, who is to be paid Four Pounds for it; and then the Lord Chief Juſtice of the Court of King's Bench carries the Record, and a Tranſcript thereof, up to the Houſe of Lords in full Parliament, and after it is examined there, he leaves the Tranſcript with the Lords, but brings back the Record into the Court of King's Bench; ſo that the Parliament have only a Tranſcript of the Proceedings.

And this being done, the Attorney for the Defendant in Errors, gets ſome Lord to move that the Plaintiff in Errors may aſſign his Errors; but if you are for the Plaintiff, the Lords are to be moved that upon his aſſigning Errors, the Defendant may appear and make his Defence, and Counſel be heard on both Sides: Then after the Judgment is either affirmed, reverſed or *Non pros'd*, the Clerk of the Parliament

ment will remand the Tranſcript of the Record into *B. R.* for them to enter upon Record the Affirmance or Reverſal thereof, at the End of the ſaid Judgment given in that Court, and for Execution to be made there, *&c.*

The Writ of Error in *Parliament* is made returnable immediately, or on a Prorogation *ad proximum Parliamentum*; and it doth not determine by a Prorogation: But if the Parliament be Diſſolved before the Errors are heard, it is otherwiſe; and on Motion, Execution hath been granted in *B. R.* on a Judgment in ſuch a Caſe, the Record being never out of the Court.

Writs of Error *to* Ireland *or* Wales, *&c.*

TO bring a Writ of Error in the *King's Bench* here in *England* to reverſe a Judgment given in *Ireland*, a Writ muſt be procured directed to the Chief Juſtice of the Court of *B. R.* in *Ireland*, requiring him to ſummon the Plaintiff in the Action there, to appear here in this Court, to anſwer the Errors; upon which a Tranſcript of the Record is ſent over, (not the Record it ſelf of the Judgment which remains in *Ireland*) and when the Errors are argued, if the Judgment is reverſed, there muſt go a Writ to the Chief Juſtice of *Ireland* to reverſe it; for the Tranſcript of the Record cannot be remanded thither; and the Judgment is not actually reverſed here, but there: And when a Judgment in *Ireland* is affirmed, there can be no Writ of Execution granted here, for we have no Officer to execute the ſame; but on the Affirmance of the Judgment, a Manda-

tory Writ goes, reciting all the Proceedings, directed to the Judges of *B. R.* in *Ireland* commanding them to make Execution.

A Writ of Error lies not upon any Judgment in *Scotland*, becauſe it is a diſtinct Kingdom, and governed by diſtinct Laws. Error in Judgments in Real and Mix'd Actions, before the Juſtices in the Great Seſſions in *Wales*, may be redreſs'd by Writ of Error in *B. R.* in *England*; and ſo in Perſonal Actions by a late Statute. *Stat.* 34 & 35 *H.* 8. 1 *W.* & *M.* *c.* 27.

The Entry *of a* Writ of Error *brought in* B. R. *and Judgment thereupon.*

THE Lord the King hath given in Charge to his beloved and faithful Sir *Robert Eyre*, Knt. his Chief Juſtice of the Bench, his Writ cloſed in theſe Words, to wit; *George* the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* To our beloved and faithful, *&c.* Greeting: Becauſe in the Record and Proceſs, and alſo in giving Judgment of the Plea, which was in our Court before you, and your Companions, our Juſtices of the Bench, by our Writ between *A. B.* and *C. D.* of a certain Treſpaſs on the Caſe, done to the Damage of the ſaid *A.* 100 *l.* as it is ſaid, Error Manifeſt hath intervened, to the great Damage of him the ſaid *C. D.* as by his Complaint we are informed; We willing that the Error, if there be any, be corrected in due Manner, and that full and ſpeedy Juſtice be done to the Parties aforeſaid, in this Behalf, command you, that if Judgment

be

be thereupon given, then that Record and Proceſs of the Plea aforeſaid, with all Things concerning it, to us under your Seal diſtinctly and plainly you ſend, and this Writ; ſo that thoſe we may have, the Day, &c. to the End that looking into the Record and Proceſs aforeſaid further, we may cauſe to be done thereupon for correcting that Error, what of Right and according to the Laws and Cuſtoms of our Kingdom ought to be done, &c. (The Writ of Error is to be thus entered and returned, and the whole Record annexed to *Mercy*, &c.)

Afterwards, that is to ſay, on *Friday* next after the Morrow of the Holy *Trinity*, in the ſame Term, before the Lord the King at *Weſtminſter*, came the aforeſaid *C. D.* by *W. J.* his Attorney, and ſaith, that in the Record and Proceſs aforeſaid, and alſo in the giving of the Judgment in the Plaint aforeſaid, there is manifeſt Error, in this, to wit, that by the Record aforeſaid it appears, that the Judgment aforeſaid, in Form aforeſaid given, was for the aforeſaid *A. B.* againſt the ſaid *C. D.* when by the Law of the Land, that Judgment ought to have been given for the ſaid *C. D.* againſt the ſaid *A. B.* therefore in that it is manifeſtly erred: And the ſaid *C. D.* prays the Writ of the ſaid Lord the King, to provide for the ſaid *A. B.* being before the ſaid Lord the now King, to hear the Record and Proceſs aforeſaid; and it is granted to him, &c. By which it is commanded to the Sheriff aforeſaid, that by honeſt and lawful, &c. he cauſe it to be known to the ſaid *A. B.* that he be before the Lord the King, on *Tueſday* next after three Weeks from St. *Michael*, whereſoever, &c. to hear the Record and Proceſs aforeſaid,

aforeſaid, if, &c. and further, &c. The ſame Day is given to the ſaid *C. D.* &c. at which ſaid Day, before the Lord the King at *Weſtminſter*, came the ſaid *C. D.* by his Attorney aforeſaid, and the Sheriff hath not thereof ſent the Writ; and the ſaid *A. B.* being ſolemnly required to come at the ſame Day, likewiſe by, &c. his Attorney came, upon which the ſaid *C. D.* as at firſt ſaith, that in the Record and Proceſs aforeſaid, and alſo in the giving of the Judgment aforeſaid, it is manifeſtly erred, alledging the Errors aforeſaid by him in Form aforeſaid alledged; and prays, that the Judgment aforeſaid for thoſe Errors, and others being in the Record and Proceſs aforeſaid, may be reverſed, annulled, and entirely for nothing eſteemed: And that he may be reſtored to all Things, which he loſt by Occaſion of the Judgment aforeſaid; and that the Court of the ſaid Lord the King here, may proceed as well to the Examination of the Record and Proceedings aforeſaid, as of the Matters aforeſaid above aſſign'd for Errors; and that the ſaid *A. B.* may rejoin to the Errors, &c. Upon which the ſaid *A. B.* ſaith, that in the Record and Proceſs aforeſaid, and in the giving of the Judgment aforeſaid, in nothing it is erred; and prays, that the Court of the Lord the King here, may proceed as well to the Examination of the Record and Proceedings aforeſaid, as of the Matters aſſigned for Errors aforeſaid; and that the Judgment aforeſaid may be affirmed in all Things. But becauſe the Court of the ſaid Lord the King now here, are not yet adviſed of rendering their Judgment of and upon the Premiſſes, a Day is thereof given to the Parties aforeſaid, before the

the Lord the King at *Weſtminſter*, until *Monday* next after the *Octave* of St. *Hillary*, &c. (and ſo it is continued to a further Day): At which Day, before the ſaid Lord the King at *Weſtminſter*, came the Parites aforeſaid, by their Attornies aforeſaid; upon which, having ſeen and by the Court of the Lord the King now here, fully underſtood all and ſingular the Premiſſes, and diligently examined and viewed as well the Record and Proceedings aforeſaid, and the Judgment given upon the ſame, and the Cauſes and Matters by the aforeſaid *C. D.* above aſſigned for Errors; for that it appears to the Court of the Lord the King here, that neither in the Record and Proceſs aforeſaid, nor in the giving of the Judgment aforeſaid, there is any Thing vicious or defective, and that that Record was in nothing erred; it is therefore conſidered, that the Judgment aforeſaid ſhall be affirmed in all Things, and ſtand in all Force and Effect, notwithſtanding the ſaid Cauſes and Matters above aſſigned for Error: And further it is conſidered by the ſaid Court of the Lord the King now here, that the aforeſaid *A. B.* ſhall recover againſt the ſaid *C. D.* Twelve Pounds, adjudged to the ſaid *A. B.* by this Court, according to the Form of the Statute in that Caſe lately made and provided, for his Coſts, Charges and Damages, which he hath ſuſtained by Occaſion of the Delay of Execution of the Judgment aforeſaid, by Pretence of the Proſecution of the Writ of Error aforeſaid; and that the ſaid *A. B.* may have thereof Execution, &c.

If

If the Judgment is reverſed, then it muſt be thus:

FOR that it appears to the Court of the Lord the King now here, that in the Record and Proceedings aforeſaid, and alſo in obtaining the Judgment aforeſaid, it is manifeſtly erred; it is conſidered, that the Judgment aforeſaid for that Error, and others in the Record and Proceedings aforeſaid, ſhall be reverſed, annulled, and utterly had for nothing; and that the ſaid *C. D.* be reſtored to all Things which he hath loſt by Occaſion of the ſaid Judgment, *&c.*

A Record of *Niſi prius* on *Iſſue* join'd in *Error.*

Pleas before the Lord the King at Weſtminſter *of* Hillary *Term, in the Sixth Year of the Reign of the Lord* George *the Second, now King of* Great Britain, *&c. Roll 65.*

England, ſſ. THE Lord the King hath given in Charge, to his beloved and faithful *Robert Eyre*, Knt. his Chief Juſtice of the Bench, his Writ cloſed in theſe Words, to wit; *George* the Second, by the Grace of God, King of *Great Britain*, &c. To his beloved and faithful *R. E.* Knt. his Chief Juſtice of the Bench, Greeting: Becauſe in the Record and Proceſs, and alſo in giving Judgment of the Plea, which was in our Court before you, and your

your Companions, our Juſtices of the Bench, by our Writ between *A. B.* late of, *&c.* and *C. D.* and *E. F.* late of, *&c.* of a certain Treſpaſs on the Caſe, *&c.* Error manifeſt hath intervened, *&c.* (reciting the Writ, and Return of the whole Proceedings, to the End of the Tranſcript): And the ſaid *C. D.* and *E. F.* in Mercy, *&c.*

Afterwards, to wit, on the Day next after, *&c.* in this ſame Term, before the Lord the King at *Weſtminſter*, came the ſaid *C. D.* in his proper Perſon, and ſaith, that in the Record and Proceſs aforeſaid, and alſo in giving the Judgment aforeſaid, it is manifeſtly erred, in this, that is to ſay; that by the Record aforeſaid it appears, that the Judgment aforeſaid given being as well againſt the ſaid *C. D.* as againſt *E. F.* when in Truth the ſaid *E. F.* in the Plea aforeſaid mentioned, before the Trial of the Iſſue in the Record aforeſaid between the Parties aforeſaid joined, and before the giving of the Judgment aforeſaid, to wit, on the Day of, *&c.* in the Year, *&c.* of the Reign of the now King, at, *&c.* in the County of *S.* aforeſaid died; and ſo the Judgment aforeſaid was erroneous and void in Law; and the ſaid *C. D.* prays, that the Judgment aforeſaid, by Reaſon of that Error, and others in the Record and Proceſs aforeſaid being, may be reverſed, annulled, and entirely had for nothing; and that the ſaid *C. D.* to all Things which by Occaſion of the ſaid Judgment he hath loſt, he may be Reſtored: And he prays the Writ of the Lord the King, to provide for the aforeſaid *A. B.* being before the ſaid Lord the King to hear the Record and Proceſs aforeſaid; and it

is granted; by which it is commanded to the Sheriff of the County of *S.* that by lawful, &c. he cauſe it to be known to the ſaid *A. B.* that he be before the Lord the King, on the Day, &c. whereſoever, &c. to hear the Record and Proceſs aforeſaid, if, &c. and further, &c. the ſame Day is given to the ſaid *C. D.* &c. at which Day, before the Lord the King at *Weſtminſter*, came the ſaid *C. D.* in his proper Perſon, and the Sheriff hath not thereof ſent the Writ; and the ſaid *A. B.* the Fourth Day of the Plea, being ſolemnly demanded, by *G. T.* his Attorney likewiſe came, and ſaith, that for any thing above alledged, the Judgment aforeſaid ought in no wiſe to be reverſed, becauſe he ſaith, that the ſaid *E. F.* in the Plea aforeſaid, mentioned ſtill remains alive, and in full Life being; without that, that the ſaid *E. F.* before the Trying of the Iſſue aforeſaid, in the Record aforeſaid, between the Parties aforeſaid was joined, died in Manner and Form as the ſaid *C. D.* hath above alledged; and this he is ready to verify; whereupon he prays that the Judgment aforeſaid may be in all Things affirmed, &c.

And the ſaid *C. D.* as before ſaith, that the ſaid *E. F.* before the Trial of the Iſſue in the Record aforeſaid, between the Parties aforeſaid, was joined, died in Manner and Form as the ſame *C. D.* hath above alledged; and he prays, that this may be inquired of by the Country, and the ſaid *A. B.* does likewiſe the ſame, &c. therefore it is commanded to the Sheriff of the County of *S.* aforeſaid, that he cauſe to come before the Lord the King, on the Day, &c. whereſoever, &c. Twelve, &c. of the Body of

the County, &c. by whom, &c. and who are neither, &c. to recognize and try upon their Oaths, whether the ſaid *E. F.* before the Trial of the Iſſue aforeſaid, in the Record aforeſaid, between the Parties aforeſaid joined, died as the ſaid *C. D.* hath alledged, or not, becauſe as well, &c. the ſame Day is given to the ſaid Parties, &c. at which ſaid Day before the Lord the King at *Weſtminſter* came the ſaid *C. D.* in his proper Perſon, and the ſaid *A. B.* by his Attorney aforeſaid, and the Sheriff of the County of *S.* to wit, *J. S.* Eſq; made a Return of the ſaid Writ of *Venire facias* to him in Form aforeſaid, directed in all Services, and executed together with a Panel of the Names of the Jurors, of which none, &c. therefore the ſaid Sheriff is commanded, that he diſtrain the Jurors aforeſaid by all their Lands, &c. ſo that he hath their Bodies before the Lord the King, on the Day, &c. or before the Juſtices of the Lord the King aſſigned to take Aſſiſes in the Couty aforeſaid, the Day, &c. at, &c. in the County aforeſaid, if according to the Form of the Statute, &c. they ſhall firſt come for Default of Jurors, &c. therefore let the Sheriff have their Bodies, &c. And be it known that the Writ of the Lord the King thereof, on the Day, &c. this ſame Term before the ſaid Lord the King at *Weſtminſter*, is to be delivered of Record to the Under-Sheriff of the County aforeſaid, in Form of Law to be executed, under a Peril attending, &c.

A Writ of Error coram vobis reſidet *in* B. R. *and Aſſignment of Errors.*

AFterwards, that is to ſay, on the Day, *&c.* before the Lord the King at *Weſtminſter* came the ſaid *C. D.* by *W. D.* his Guardian, by the Court of the Lord the King to this ſpecially admitted, and brought here into the ſaid Court of the ſaid Lord the King then there, a certain Writ of the ſaid Lord the King of Error, to correct the Proceedings of and upon the Premiſſes; and pray'd, that the ſaid Writ be allowed, and it is allowed, *&c.* which ſaid Writ follows in theſe Words, to wit, *George* the Second, *&c.* to our Juſtices aſſigned to hold Pleas before us, Greeting: Becauſe in the Record and Proceſs of a certain Plea, which was in our Court before us, by Bill between *A. B.* and *C. D.* of a certain Treſpaſs on the Caſe, done to the ſaid *A.* by the ſaid *C.* and in giving the Judgment in the ſaid Plea in our Court before us, which ſaid Record and Proceſs, now before you remain, as 'tis ſaid, Error manifeſt hath intervened, to the great Damage of the ſaid *C.* as by his Complaint we are informed; We, willing that the Error, if any be, be corrected in due manner, and that full and ſpeedy Juſtice be done to the Parties aforeſaid, in this Particular, command you that you look into the Record and Proceſs aforeſaid further, and cauſe to be done thereupon for Correcting that Error what of Right and according to the Law and Cuſtom of our Kingdom of *England* ought to be done.

Witneſs Our ſelf at *Weſtminſter* the Day, *&c.* in the Seventh Year of our Reign.

And upon this the ſaid *C.* by his Guardian aforeſaid, ſaith, that in the Record and Proceſs aforeſaid, and alſo in giving the Judgment aforeſaid, it is manifeſtly erred, in this, that he the ſaid *C.* appeared in the Suit aforeſaid by his Attorney, yet the ſaid *C.* at the Time of the Appearance, and giving the Judgment aforeſaid, was within the Age of Twenty-one Years, that is to ſay, of the Age of Eighteen Years, *&c.* and no more, that is to ſay, at the Pariſh of the Bleſſed *Mary* of the *Arches*, in the Ward of *Cheap*, *London*, aforeſaid, in which Caſe the ſaid *C.* ought to have been admitted to appear in the Court aforeſaid, to defend the Suit aforeſaid by his Guardian, and not by his Attorney, or in his proper Perſon; therefore in that it is manifeſtly erred; and this he is ready to verify; whereupon the ſaid *C.* prays, that the Judgment aforeſaid, for the Error aforeſaid, may be reverſed, annulled, and entirely had for nothing; and that he may be reſtored to all Things, which he hath loſt by Occaſion of the Judgment aforeſaid.

And the ſaid *C.* prays the Writ of the ſaid Lord the King, to provide for the ſaid *A. B.* being before the ſaid Lord the now King, to hear the Record and Proceſs aforeſaid, and it is granted, *&c.* by which it is commanded to the Sheriff of *M.* aforeſaid, that by honeſt and lawful Men of his Bailiwick he cauſe it to be known to the ſaid *A.* that he be before the ſaid Lord the King, the Day, *&c.* whereſoever, *&c.* to hear the Record and Proceſs aforeſaid, if, *&c.* and

further

further to do, &c. The ſame Day is given to the ſaid *C. D.* &c.

Aſſignment of ſeveral Errors in the Exchequer Chamber, and a Writ to the Lord Chief Juſtice of B. R. *to certify.*

AND the aforeſaid *C. D.* by *W. J.* his Attorney comes here into the Court, and ſaith, that in the Record and Proceſs aforeſaid, and alſo in giving the Judgment aforeſaid, it is manifeſtly erred; in this, that by the Record and Proceſs aforeſaid, it appears that the aforeſaid *A. B.* by *G. T.* his Attorney appeared, when in Truth and in Fact the ſaid *G. T.* had no Warrant of Attorney of Record to appear for the ſame *A. B.* againſt the ſaid *C. D.* in the Plea aforeſaid; and the ſaid *C.* further ſaith, that it is erred in this, that is to ſay, that no ſuch Writ of *Venire* to cauſe Twelve, &c. between the Parties aforeſaid, of the Plea aforeſaid, in the ſame Record mentioned, in the ſaid Court of the Lord the King before the King himſelf is filed of Record, ſo as by the Record aforeſaid is above ſuppoſed; alſo it is erred in this, that no ſuch Writ of *Diſtringas Jurator'* between the Parties aforeſaid, of the Plea in the ſame Record, in the ſaid Court of the ſaid Lord the King, before the King himſelf, is filed of Record; alſo it is erred in this, that there was not any Bill had between the Parties aforeſaid in the ſaid Record mentioned, in the Court of the Lord the King, before the King himſelf filed of Record, to Warrant the Declaration and Judgment aforeſaid; and the ſaid *C.* further

ſaith, that in the Record and Proceſs aforeſaid, and alſo in giving the Judgment aforeſaid, it is manifeſtly erred, in this, that is to ſay, that by the Record aforeſaid, it appears, that the Judgment aforſaid, in Form aforeſaid given, was for the ſaid *A.* againſt the ſaid *C.* when by the Law of the Land that Judgment ought to have been given for the ſaid *C.* againſt him the ſaid *A.* therefore in that it is manifeſtly erred: And he prays ſeveral Writs of *Certiorari*, &c. and it is granted to him, &c.

George the Second, by the Grace of GOD, &c. To our beloved and faithful *Philip* Lord *Hardwick*, our Chief Juſtice aſſigned to hold Pleas in our Court before us, Greeting: Becauſe in the Record and Proceſs, and alſo in giving the Judgment, in the Plea which was in our Court before us, by Bill between *A. B.* Eſq; and *C. D.* Gent. of a certain Debt which the ſaid *A.* required of the ſaid *C.* as 'tis ſaid, Error manifeſt hath intervened, to the great Damage of the ſaid *C.* as by his Complaint we are informed; which ſaid Judgment and the Record and Proceſs thereof, before our Juſtices of the Bench and our Barons of the *Exchequer*, who are of the Degree of the Coif, for correcting the Errors in the ſame, according to the Form of the Statute of the Twenty-ſeventh Year of the Reign of the Lady *Elizabeth*, late Queen of *England*, in that Caſe made and provided, in our Court of *Exchequer Chamber*, we have cauſed to come; and the ſaid *C.* in the ſaid Court of *Exchequer Chamber* appearing, hath ſaid that where by the Record aforeſaid, before the ſaid Juſtices and Barons ſent, it appears that the ſaid *A.* appointed one

G. T. his Attorney againſt the ſaid *C.* of the Term of *Eaſter*, in the Sixth Year of our Reign aforeſaid, yet the ſaid *G. T.* had no Warrant of Attorney of Record filed to appear for the ſame *A.* in the Plea aforeſaid; and where by the Record aforeſaid, ſo as aforeſaid ſent, it appears that the ſaid *A.* the ſame *Eaſter* Term, in the ſaid Sixth Year of our Reign, exhibited in our ſaid Court his Bill againſt the ſaid *C.* of the Plea aforeſaid, yet he had not any ſuch ſort of Bill of Record filed, with the Continuation thereof, to warrant the Declaration and Judgment aforeſaid; and further the ſaid *C.* hath ſaid, that no ſuch Writ of *Venire facias*, *&c.* between the Parties aforeſaid, of the Plea aforeſaid, in our ſaid Court before us is in Being of Record filed, as by the Record aforeſaid is ſuppoſed; and alſo, that no ſuch Writ of *Diſtringas*, *&c.* between the ſaid Parties, of the Plea aforeſaid, in our ſaid Court before us, is of Record filed, as by the aforeſaid Record is above ſuppoſed: We willing that the Premiſſes aforeſaid in this Particular be certified, command you, that you ſearch the Rolls and other *Memorandums* of Warrants of Attorney, of the County of *S.* of the aforeſaid *Eaſter* Term, in the Sixth Year of our Reign aforeſaid, and of *Trinity* Term, in the Seventh Year of our Reign, remaining of Record in your Cuſtody; and alſo that you do ſearch the File of Bills, of the ſaid Term of *Eaſter*, in the Sixth Year aforeſaid, remaining likewiſe under your Cuſtody; and alſo that you ſearch our Writs of *Ven. Fac.* *&c.* to the Sheriff of *S.* directed in our ſame Court, of *Trinity* Term, in the Seventh Year of our Reign, and of *Michaelmas* and *Hillary* Terms, in the ſame Year,

in your Cuſtody of Record being; and alſo that you ſearch our Writs of *Diſtring. Jurator.* to the ſaid Sheriff of *S.* directed, in the ſame Court of *Eaſter* Term, in the Seventh Year aforeſaid, being alſo of Record under your Cuſtody: And what of the Warrant of Attorney aforeſaid, and of the Bill and Continuation thereof indorſed, and alſo what of the aforeſaid ſeveral Writs between the Parties aforeſaid, of the Plea aforeſaid, you ſhall find, ſo much as fully and intirely in your Cuſtody remains, you certify without Delay to our ſaid Juſtices of the Bench and our Barons of the Exchequer, in our Court of *Exchequer Chamber* aforeſaid, together with this Writ. Witneſs *Robert Eyre*, Knt. at *Weſtminſter* the Day, *&c.* in the Eighth Year of our Reign.

The Anſwer of Philip *Lord* Hardwick, *Chief Juſtice, underwritten.*

I Have ſearched the Rolls and other *Memorandums* of Warrants of Attorney, of the County of *S.* of *Eaſter* Term, in the Sixth Year of the Reign of the Lord the King within mentioned, and of *Trinity* Term in the Seventh Year of the Lord the King, in my Cuſtody filed of Record, and I find no Warrant of Attorney of the ſaid Term in the Sixth Year aforeſaid, by the within named *A.* in the Plea within mentioned of Record filed; but I find a certain Warrant of Attorney, by the ſame *A.* filed of Record, of *Trinity* Term, in the Seventh Year aforeſaid; I have alſo ſearched the File of Bills of the ſame *Eaſter* Term, in the Sixth Year

Year aforesaid, in my Custody filed of Record; and I there find a certain Bill between the Parties within mentioned, of the Plea aforesaid, of the same Term, without any Continuance; I have also searched the Writs of *Venire* to make Twelve, &c. of *Trinity* Term, in the Seventh Year within written, and of *Michaelmas* and *Hillary* Terms, in the same Year, in my Custody filed of Record, and I find no Writ of *Venire*, &c. of *Trinity* Term in the said Seventh Year within written, nor of *Michaelmas* Term, in the same Year aforesaid, between the Parties aforesaid, in the Plea aforesaid; but I there find a certain Writ of *Ven. Fac.* directed to the Sheriff of *S.* between the said Parties, in the Plea aforesaid, of *Hillary* Term, in the same Seventh Year within written, filed of Record; I have also searched the Writs of *Distringas Jurator.* of *Easter* Term, in the Seventh Year within mentioned, in my Custody filed of Record, and I there find a certain Writ of *Distring. Jur.* between the Parties aforesaid, in the Plea aforesaid, of the same Term filed of Record: The Tenor of which said Warrant of Attorney, Bill and Writs aforesaid, follows in a certain Schedule to this Writ annexed; and this I certify to the Justices of the said Lord the King of the Bench, and the Barons of the *Exchequer* within written, as within it is commanded me.

Hardwick.

A

A Record remitted back in B. R. with the Judgment affirmed.

AFterwards, to wit, the Day, &c. in the Year, &c. of the Lord the now King, the Transcript of the Record and Proceſs aforeſaid, between the Parties aforeſaid, of the Plea aforeſaid, with all things belonging to the ſame, by Pretence of a certain Writ of Error of the ſaid Lord the King, brought in the Premiſſes by the ſaid C. D. before the Juſtices of the ſaid Lord the King of the Bench, and the Barons of the *Exchequer* of the Lord the King of the Dignity of the Coif, in the *Exchequer Chamber* aforeſaid, according to the Form of the Statute in the Parliament of the Lady *Elizabeth* late Queen of *England*, &c. at *Weſtminſter* made and held the Twenty-third Day of *November*, in the Twenty-ſeventh Year of her Reign, from the ſaid Court of the ſaid Lord the King here, before the King himſelf, were tranſmitted and ſent; and the ſaid C. in the ſame Court of *Exchequer Chamber* appearing, divers Matters for Error in the Record and Proceſs aforeſaid, for reverſing and annulling the Judgment aforeſaid hath aſſign'd, to which the ſaid *A. B.* in the ſaid Court of *Exchequer Chamber* likewiſe appearing, hath pleaded that neither in the Record and Proceſs aforeſaid, nor in giving the Judgment aforeſaid, any thing was erred: And afterwards, to wit, on the Day, &c. in the Year, &c. of the ſaid Lord the King, having viewed, and by the Court of *Exchequer Chamber* aforeſaid diligently examined, and fully underſtood, as well the Record and Proceſs

aforeſaid, and the Judgment given upon the ſame, as the ſaid Cauſes by the ſaid *C.* above alledged for Error; it ſeeming to the ſaid Court of *Exchequer Chamber*, that the Record and Proceſs aforeſaid is no ways Vicious or Defective, and that that Record was in nothing erred: Therefore it was then and there by the Court of *Exchequer Chamber* aforeſaid conſidered, that the Judgment aforeſaid ſhould be in all things affirmed, and ſtand in all its Force and Effect, notwithſtanding the ſaid Cauſes above aſſigned and alledged for Error; and further, it was conſidered then and there by the ſame Court, that the aforeſaid *A.* ſhould recover againſt the ſaid *C.* Thirty Pounds, adjudged to the ſame *A.* with his Aſſent, by the ſaid Court of *Exchequer Chamber*, according to the Form of the Statute in that Caſe made and provided, for his Damages, Expences and Coſts which he hath ſuſtained, by Occaſion of the Delay of Execution of the Judgment aforeſaid, by Pretence of the Proſecution of the aforeſaid Writ of Error: And thereupon the Record aforeſaid, and alſo the Proceſs aforeſaid, before the Juſtices of the Bench and Barons of the Exchequer aforeſaid in the Premiſſes had, by the ſame Juſtices and Barons were then remitted before the Lord the King whereſoever, *&c.* according to the Form of the Statute, *&c.* And in the ſame Court of the ſaid Lord the King, before the King himſelf here, now remain, *&c.*

A Record remitted back in B. R. with the Judgment affirmed.

AFterwards, to wit, the Day, &c. in the Year, &c. of the Lord the now King, the Tranſcript of the Record and Proceſs aforeſaid, between the Parties aforeſaid, of the Plea aforeſaid, with all things belonging to the ſame, by Pretence of a certain Writ of Error of the ſaid Lord the King, brought in the Premiſſes by the ſaid *C. D.* before the Juſtices of the ſaid Lord the King of the Bench, and the Barons of the *Exchequer* of the Lord the King of the Dignity of the Coif, in the *Exchequer Chamber* aforeſaid, according to the Form of the Statute in the Parliament of the Lady *Elizabeth* late Queen of *England*, &c. at *Weſtminſter* made and held the Twenty-third Day of *November*, in the Twenty-ſeventh Year of her Reign, from the ſaid Court of the ſaid Lord the King here, before the King himſelf, were tranſmitted and ſent; and the ſaid *C.* in the ſame Court of *Exchequer Chamber* appearing, divers Matters for Error in the Record and Proceſs aforeſaid, for reverſing and annulling the Judgment aforeſaid hath aſſign'd, to which the ſaid *A. B.* in the ſaid Court of *Exchequer Chamber* likewiſe appearing, hath pleaded that neither in the Record and Proceſs aforeſaid, nor in giving the Judgment aforeſaid, any thing was erred: And afterwards, to wit, on the Day, &c. in the Year, &c. of the ſaid Lord the King, having viewed, and by the Court of *Exchequer Chamber* aforeſaid diligently examined, and fully underſtood, as well the Record and Proceſs

aforeſaid, and the Judgment given upon the ſame, as the ſaid Cauſes by the ſaid *C.* above alledged for Error; it ſeeming to the ſaid Court of *Exchequer Chamber*, that the Record and Proceſs aforeſaid is no ways Vicious or Defective, and that that Record was in nothing erred: Therefore it was then and there by the Court of *Exchequer Chamber* aforeſaid conſidered, that the Judgment aforeſaid ſhould be in all things affirmed, and ſtand in all its Force and Effect, notwithſtanding the ſaid Cauſes above aſſigned and alledged for Error; and further, it was conſidered then and there by the ſame Court, that the aforeſaid *A.* ſhould recover againſt the ſaid *C.* Thirty Pounds, adjudged to the ſame *A.* with his Aſſent, by the ſaid Court of *Exchequer Chamber*, according to the Form of the Statute in that Caſe made and provided, for his Damages, Expences and Coſts which he hath ſuſtained, by Occaſion of the Delay of Execution of the Judgment aforeſaid, by Pretence of the Proſecution of the aforeſaid Writ of Error: And thereupon the Record aforeſaid, and alſo the Proceſs aforeſaid, before the Juſtices of the Bench and Barons of the Exchequer aforeſaid in the Premiſſes had, by the ſame Juſtices and Barons were then remitted before the Lord the King whereſoever, *&c.* according to the Form of the Statute, *&c.* And in the ſame Court of the ſaid Lord the King, before the King himſelf here, now remain, *&c.*

A Writ of Error brought in Parliament, *to reverse the Affirmance of a Judgment in the Exechequer Chamber.*

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* To our beloved and faithful *Philip* Lord *Hardwick*, our Chief Juſtice aſſign'd to hold Pleas in our Court before us, Greeting: Becauſe in the Record and Proceſs, and alſo in giving the Judgment in the Plea which was in our Court before us, by Bill between *A. B.* and *C. D.* of a certain Debt, which the ſaid *A.* demanded of the ſaid *C.* which ſaid Record and Proceſs, with the Cauſes of Error intervening, before our Juſtices of the Bench and Barons of the Exchequer in our Court of Exchequer Chamber we have made to come, and the Judgment thereof being there affirmed, as 'tis ſaid, Error manifeſt hath intervened, to the great Damage of the ſaid *C.* as by his Complaint we are informed; we willing that the Error, if any be, be corrected in due manner, and that full and ſpeedy Juſtice be done to the Parties aforeſaid, in this Particular, command you that if Judgment thereof be ſo given and affirmed, then the Record and Proceſs aforeſaid, with all things concerning them, to us in our preſent *Parliament* under your Seal diſtinctly and openly you ſend without Delay, and this Writ; to the end that looking into the Record and Proceſs aforeſaid further, by Aſſent of the Lords Spiritural and Temporal in the ſame Parliament being, we may cauſe to be done thereupon for Cor-

correcting that Error, that which of Right and according to the Law and Cuſtom of our Kingdom of *England* ought to be done. Witneſs Our ſelf at *Weſtminſter* the Twelfth Day of *December* in the Seventh Year of our Reign.

Parnel.

By the Lord the King.

Anſwer of Philip *Lord* Hardwick, *the Chief Juſtice within named.*

THE Record and Proceſs of the Plea, whereof Mention is within made, with all things concerning it, to the Lord the King in this preſent Parliament, by my proper Hands I have brought, in a certain Record annexed to this Writ, as within it is commanded me.

Hardwick.

Order of the Houſe of Lords *to aſſign Errors.*

Die Mercur. 22. *Januar.* 1734.

UPON reading the Petition of *A. B.* ſhewing, That he having obtained a Judgment againſt one *C. D.* in *Michaelmas* Term laſt; and that the ſaid *C. D.* for Delay hath brought his Writ of Error into this Houſe the Day, *&c.* of *December* laſt, but hath not aſſigned Errors thereon; and praying that the ſaid Writ of Error may be remitted, that he may have Execution thereupon: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the

the ſaid *C. D.* be, and is hereby required to aſſign Error thereupon on or before *Saturday* next at Ten of the Clock in the Forenoon; otherwiſe the ſaid Tranſcript of the ſaid Judgment made on the Behalf of the ſaid *A. B.* ſhall be, and is hereby remitted, to the end he may have Execution thereupon, as if no ſuch Writ of Error had been brought into this Houſe.

W. Cowper, Cl. Parliament.

Petition *for the Cauſe to be heard at the Bar of the Houſe.*

To the Right Honourable the Lords Spiritual and Temporal in Parliament aſſembled.

The Humble Petition of A. B. *Defendant in a Writ of Error in Parliament, wherein* C. D. *is Plaintiff,*

Sheweth,

THAT your Petitioner having obtained a Judgment in the Court of King's Bench againſt the ſaid *C. D.* in an Action of Debt for Two-hundred Pounds, which in *Michaelmas* Term laſt on a Writ of Error brought by the ſaid *C. D.* in the Exchequer Chamber, was unanimouſly affirmed by all the Judges of the Common Pleas and Barons of the Exchequer: That the ſaid *C. D.* hath lately brought a Writ of Error returnable in Parliament, in which the Plaintiff in Error hath named himſelf by a different Addition from what he is named in the ſaid Action, with an Intent thereby, as your Petitioner is adviſed, to delay your Petitioner

in

in a moſt unreaſonable and unuſual Manner, from the Recovery of his juſt Debt. That the Plaintiff in Error hath nevertheleſs aſſigned his Errors, and your Petitioner hath joined in Error.

Your Petitioner therefore moſt humbly prays your Lordſhips, to appoint ſuch a Day for taking the Premiſſes into your Conſideration, and arguing the ſaid Errors as to your Lordſhips great Wiſdom ſhall ſeem meet. And your Petitioner ſhall pray, *&c.*

A. B.

Order of the Houſe of Lords *for hearing the Cauſe.*

UPON reading the Petition of *A. B.* Defendant, in a Writ of Error depending in this Houſe, wherein *C. D.* is Plaintiff, ſetting forth, That the Petitioner having obtained a Judgment after Verdict in the Court of King's Bench againſt the ſaid *C. D.* in an Action of Debt, which in *Michaelmas* Term laſt, on a Writ of Error brought by the ſaid *C. D.* in the Exchequer Chamber, was unanimouſly affirmed; That the ſaid *C. D.* having brought a Writ of Error returnable in Parliament, in which he hath named himſelf by a different Addition from what he is named in the ſaid Action, with an Intent to delay and hinder the Petitioner from the Recovery of his juſt Debt; That the Plaintiff hath nevertheleſs aſſigned his Errors, and the Petitioner joined therein; And praying that a Day may be appointed for taking the Premiſſes into

Conſideration, and arguing the ſaid Errors as to this Houſe ſhall ſeem meet; It is ordered, by the Lords Spiritual and Temporal in Parliament aſſembled, that the Plaintiff in Error be ſerved with a Copy of the ſaid Petition, and this Order; and that this Houſe will hear Council thereupon on *Thurſday* the Fifth Day of *February* next, at Eleven a Clock.

The Caſe of the Defendant in Error.

A. B. the now Defendant in the Writ of Error, brought an Action of Debt in the Court of King's Bench againſt the now Plaintiff *C. D.* for, *&c.* which Action was founded on, *&c.* and the Declaration ſets forth, that, *&c.*

Upon the General Iſſue pleaded, this Action was tried at the Lent Aſſizes holden for the County of *S.* in the Fourth Year of King *George* the Second, before Mr. Juſtice *Price*, by a ſubſtantial Jury, and after a very long Trial upon full Evidence, a Verdict was given for Mr. *B.* to the Satisfaction of the Judge who tried the Cauſe: And upon this Verdict the Court of King's Bench gave Judgment for the ſaid *A. B.* the Plaintiff in the Action; and the Defendant *C. D.* brought a Writ of Error in the Exchequer Chamber, where the ſaid Judgment was affirmed unanimouſly by all the Judges of the Common Pleas and Barons of the Exchequer.

That this Action being founded upon a Law to remedy many great Abuſes, *&c.* and the Fact being verified by Verdict, and the Ground and Nature of the Action, as well as the Form and Manner

Manner of the Proceeding, having been approved of by all the Judges of *England*.

This Defendant in the Writ of Error humbly prays, that the ſaid Judgment in the Exchequer Chamber may be affirmed by this Honourable Houſe, with Coſts.

D. Ryder.
J. Belfield.

Order *for affirming the Judgment in* Parliament, *and Remiſſion of the Record.*

WHereas by Virtue of his Majeſty's Writ of Error returnable into the Houſe of Peers in Parliament aſſembled, a Record of the Court of *King's Bench* was brought into this Houſe on the Sixth Day of *January* laſt paſt, with the Tranſcript thereof, wherein Judgment is entered for *A. B.* Eſq; againſt *C. D.* Gent. in an Action of Debt, *&c.* Upon which Errors were aſſigned, and Iſſue joined; and this Day Counſel heard at the Bar, to argue the Errors thereupon: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that the ſaid Judgment given for the ſaid *A. B.* againſt the ſaid *C. D.* be, and is hereby affirmed; and that the ſaid *A. B.* do recover Fifty Pounds for his Coſts, occaſioned by the Delay of Execution of the ſaid Judgment, by Pretence of the ſaid Writ of Error, according to the Statute in that Caſe made and provided; and that the Tranſcript of the ſaid Record, wherein Judgment is entered as aforeſaid, be remitted.

A Writ of Error to Ireland *on Judgment given there.*

GEORGE the Second, *&c.* To our beloved and faithful Counſellor Sir *Thomas Rogerſon*, Knt. our Chief Juſtice aſſigned to hold Pleas in our Court before us, in our Kingdom of *Ireland*, Greeting: Becauſe in the Record and Proceſs, and alſo in giving the Judgment, in the Plea which was in onr Court before us in the Kingdom of *Ireland*, by Bill between *A. B.* and *C. D.* otherwiſe called, *&c.* of *K.* in the ſaid Kingdom of *Ireland*, as well of One Thouſand Pounds Debt, which the ſaid *A. B.* in the ſame Court recovered againſt the ſaid *C. D.* as alſo for Twenty-eight Shillings and Six Pence, which in the ſame Court were adjudged to the ſaid *A.* for his Damages that he ſuſtained by Occaſion of the detaining the ſaid Debt, and his Expences and Coſts laid out by him about his Suit, *&c.* which ſaid *C. D.* afterwards died, as by the Suggeſtion of *T. D.* Son and Heir of the ſaid *C. D.* we underſtand, Error manifeſt hath intervened, to the great Damage of him the ſaid *T. D.* the ſaid Son and Heir of the ſaid *C.* as by his Complaint we are informed; We willing that the Error, if there be any, be corrected in due Manner, and that full and ſpeedy Juſtice be done to the Parties aforeſaid, in this Behalf, command you, that if Judgment be thereupon given, then the Record and Proceſs of the Plea aforeſaid, with all things concerning the ſame, to Us under your Seal diſtinctly and openly you ſend, and this Writ; ſo that thoſe

Things

Things we may have the Day, *&c.* whereſoever we ſhall then be in *England*, that looking into the Record and Proceſs further, we may cauſe to be done thereupon for correcting that Error, what of Right ought to be done: And cauſe it to be known to the ſaid *A. B.* that he be then there, to proſecute or proceed in the Plea aforeſaid, and further to do and receive what our Court before us in *England* ſhall conſider of in the Premiſſes. Witneſs our ſelf at *Weſtminſter*, the Day of, *&c.* in the Year, *&c.* of our Reign.

The Record and Proceſs of the Plea, whereof Mention is within made, with all Things concerning it, before the Lord the King whereſoever in *England*, *&c.* at the Day and Place within contained, I ſend in a certain Record to this Writ annexed; and I have cauſed the within named *A. B.* to know, that he be then there to proceed in the Plea aforeſaid, as within it is commanded me.

So Anſwers T. Rogerſon.

Of Originals, and Outlawries in B. R. and Reverſing Outlawries.

The Commencement of a Suit in the King's Bench is by Original or by Bill; if by Bill, it is when the Party is ſuppoſed to be already in Priſon, and in the Cuſtody of the *Marſhal*: And if by Original, it is the ſame with the Common Pleas, where it is always by Original, except it be againſt the Attornies and Officers of the Court.

This original Writ iſſues out of the Court of Chancery, and is under the Great Seal of *England* returnable in the King's Bench, or Common Pleas, as the Caſe is, and gives the Court a Juriſdiction to hold Plea of that Matter; for till the Writ is return'd, the Suit is not depending: And if it come too late for the Sheriff to execute it, an *Alias* and *Pluries* ſhall iſſue out of the Court where the Original is returnable; but if no Return be made, they ſhall iſſue out of the Chancery. And the Original commands the Sheriff, that if the Plaintiff finds Pledges, that he will proſecute his Suit; then to execute the Proceſs, whereby to compel the Defendant to be before the Judges at the Day of the Return, to Anſwer the Complaint laid againſt him by the Plaintiff in the Action. *Finch* 53.

In the Court of King's Bench, the uſual original Writ iſſued in Actions, is for Action of Treſpaſs upon the Caſe; for this Court doth not iſſue Originals in Actions of Debt, Covenant, or Account, *&c.* whereas the Court of *C. B.* proceeds by Original in all Kinds of Actions: And to arreſt or ſue a Party to Outlawry, it is made uſe of by both Courts. But Attornies being better ſkilled in the Method by Bill, *&c.* Originals are generally little uſed in *B. R.* tho' in ſome Caſes, as Ejectment, *&c.* the Practice of it is neceſſary to be underſtood; and there is this Advantage, that a Writ of Error upon a Judgment in Ejectment, by Original, cannot be brought, or at leaſt is not returnable, but during the Sitting of a Parliament, which is of great Uſe in getting ſpeedy Poſſeſſion.

All

All Originals in Treſpaſs on the Caſe, where the Damages are laid above Forty Pounds, pay a Fine to the Crown in Proportion to the Damage, *viz.* From Forty Pounds to One Hundred Marks, 6 *s.* 8 *d.* from One Hundred Marks to One Hundred Pounds, 10 *s.* from One Hundred Pounds to Two Hundred Marks, 13 *s.* 4 *d.* from Two Hundred Marks to Four Hundred Marks, 16 *s.* 8 *d.* from Four Hundred Marks to Two Hundred Pounds, 1 *l.* ſo for every Hundred Marks more, you pay 6 *s.* 8 *d.* and for every Hundred Pounds further, 10 *s.* And Fines are paid for original Writs in Debt in *C. B.* for every Writ of 40 *l.* Debt, 6 *s.* 8 *d.* and for every One Hundred Marks, 6 *s.* 8 *d. &c.* alſo for Writs of Plea of Land, not being Writs of Right Patent, for the yearly Value of Five Marks, 6 *s.* 8 *d.* and ſo according to that Rate. Stat. 19 *Hen.* 6. *c.* 44. 7 *H.* 6. *c.* 33.

The Original is the Foundation of the *Capias*, and all the ſubſequent Proceſs, the Return whereof is uſually the *Teſte* of the *Capias*; but moſt commonly the *Capias* is firſt taken out before the Original, by leaving the *Præcipe* with the Filazer, who makes out a *Capias* thereupon, and afterwards the *Præcipe* being carried to the Curſitor, he will make out an Original; and the Filazer after it is returned files it with the *Cuſtos Brevium*. Original Writs bear *Teſte* in the Name of the King; and if they are defective in Form, they are abateable; but no Abatement of the Writ is admitted after Judgment in the Cauſe, it being allowed to be good by the Pleadings and Proceedings: Originals are not amendable, if the Error be by Default of the Party who gave Inſtructions; tho' a new

Original may be taken out, where it cannot be amended. There are new Originals to warrant Judgment, returned before the ſame is ſigned; and in Caſes of Outlawry, Writs of Error, &c. 2 *Lill. Pract. Reg.* 716, 717. *Hob.* 51.

In Proceedings by Original, to gain a Term therein the *Præcipe* muſt be carried to the Curſitor of the County where you intend to try the Cauſe, within the firſt Week of the Term; and thereupon he will make out your Original returnable the firſt Return of the preceding Term; but Care is to be taken that the Original doth not bear Date before the Cauſe of Action: And when you have your Original under Seal from the Curſitor, you may get the Sheriff of the County to return a *Nihil* upon it, or may do it your ſelf in this Manner:

Pledges of Proſecution { *John Doe*, *Richard Roe*.

The within named *C. D.* hath nothing in my Bailiwick, by which he may be Attached.

T. E. *Eſq*; *Sheriff*.

The Return of the *Capias* is to be fifteen Days after the Return of the Original, and ſo it muſt be in every other Writ, as well to the Outlawry as to the Arreſt, except in the Return of, after the *Morrow of All Souls*, in *Michaelmas* Term; but by Statute, Delays in Actions by Reaſon of fifteen Days between the Teſte and Return of Writs in Perſonal Actions, and Ejectments, are remedied. If on the firſt Writ the Defendant can't be taken where the

Action

Action is laid, but reſides in another County, upon a *Non eſt Inventus* returned by the Sheriff, the Filazer will make out a *Teſtatum Capias* into any other County: And when the Defendant is arreſted and appears, the Plaintiff's Attorney is to deliver a Copy of his *Declaration* to the Attorney for the Defendant, (receiving 8 *d. per* Sheet of his Client, and 4 *d.* a Sheet of the Defendant) and the ſame Term he declares, having given Rules to Plead with the Secondary, he is to call upon the Defendant's Attorney for his Plea, and then draw up his Replication, *&c.* And it being by Original, he makes up the Paper-Book himſelf, and delivers a Copy of it to the Attorney for the Defendant: Or if it be an Iſſue, he gives Notice of Trial, and ſigns his *Venire, Diſtr. Jur. &c.* with the ſame Filazer, and ſeals the Record of *Niſi prius* with the *Cuſtos Brevium*, or with the Chief Juſtice, if the Action be laid in *Middleſex*; and then he is to ſummon Witneſſes, get ready his Breviates, and proceed to Trial as in Actions by Bill. When the Trial is over, the Plaintiff's Attorney, if the Verdict be for his Client, ſometime before the Day in Bank (the Eſſoin-Day of the ſubſequent Term) muſt bring his Iſſue to be entered on the Filazer's Rolls; but this is if the Cauſe be tried at the *Aſſizes* in the Country; for if the Trial be in *London* or *Middleſex*, he muſt enter it before the next Eſſoin-Day after the Sittings at which the Action was tried: And having thus entered his Iſſue, he may give Rules, and ſign Judgment with the Secondary, and then enter up Judgment on the Filazer's Iſſue Roll, make out his Writs of Execution, *&c.*

A Præcipe *in Action of Treſpaſs.*

London, ſſ. IF *A. B.* ſhall make you ſecure in proſecuting his Claim, or Suit, then put *C. D.* late of, *&c.* to find Sureties to Anſwer to the ſaid *A. B.* in a Plea, why with Force and Arms, the Cloſe and Houſe of him the ſaid *A.* at the Pariſh of the *Bleſſed Mary* of the *Arches* in the Ward of *Cheap*, he broke, and other Wrongs to him did, to the great Damage of him *A.* and againſt the Peace, *&c.*

Original returnable in the King's Bench, on the Day, *&c.* whereſoever, *&c.*

W. J. *Attorney for the Plaintiff.*

In Actions Demandatory, where ſomething is demanded to be rendered or done, the Writ of *Præcipe* begins with theſe mandatorial Words:

London, ſſ. COmmand the Defendant *C. D.* that he render to *A. B.* the Plaintiff ſo much Money, or that he permit the ſaid *A. B.* to enjoy his Common of Paſture, *&c.* And unleſs the ſaid *C. D.* ſhall pay the ſaid *A. B.* his Money, or permit him to enjoy the ſaid Common of Paſture, *&c.* and if the Plaintiff makes you ſecure in proſecuting his Suit, then ſummon the ſaid *C. D.* by good Summoners, *&c.* to Anſwer, *&c.*

If the Defendant is to be arreſted, or ſerved with a Copy of the Proceſs in *London*, the *Præcipe* is drawn as above; and the Form of the *Capias* is as follows:

A Capias *in* London *in Action of Treſpaſs.*

GEORGE the Second, *&c.* To the Sheriffs of *L.* Greeting: We command you, that you take *C. D.* late of, *&c.* if he be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us the Day, *&c.* whereſoever we ſhall then be in *England*, to Anſwer unto *A. B.* of a Plea of Treſpaſs, *&c.* to the Damage of him *A.* Fifty Pounds, as it is ſaid; and have you there this Writ. Witneſs *Philip* Lord *Hardwick* at *Weſtminſter*, &c.

On this *Capias* the Defendant is arreſted, and the Sum for which he is held to Bail, muſt be indorſed on the back of the *Capias* thus: *The Plaintiff's Affidavit filed for Fifty Pounds*, &c. and the Filazer ſigns it.

An Original *in Treſpaſs upon the Caſe.*

GEORGE the Second, by the Grace of God, *&c.* To the Sheriff of *S.* Greeting: If *A. B.* makes you ſecure in proſecuting his Claim, then put *C. D.* late of, *&c.* in your County, Gent. to find Pledges and ſufficient Sureties, that he be before us on the Day, *&c.* to anſwer to the ſaid *A. B.* in an Action, That why whereas the ſaid *A.* the Day, *&c.* in the Year, *&c.* at the Special Inſtance and Requeſt of the ſaid *C.* had bargained and ſold to him the ſaid *C.* Twenty Yards of Broad Cloth, at the Rate and Price of Fifteen Shillings for every Yard thereof, *&c.* And the ſaid *C.* afterwards, to wit, on the ſame Day and Year, and at the Place aforeſaid, in the County aforeſaid, in Con-

Conſideration thereof, did take upon himſelf and to the ſaid *A.* then and there faithfully promiſe, that he the ſaid *C.* the ſaid Sums of Money therefore, in the whole amounting to Fifteen Pounds of lawful Money of *Great Britain*, would well and truly pay and content to the ſaid *A.* on the Day, *&c.* And alſo whereas the ſaid *C.* afterwards, that is to ſay, the Day of, *&c.* aforeſaid, at, *&c.* in the County aforeſaid, was indebted to the ſaid *A.* in other Fifteen Pounds of lawful Money of *Great Britain*, for certain Goods, *&c.* by the ſaid *A.* to the ſaid *C.* before that Time ſold and delivered, the ſaid *C.* in Conſideration thereof, took upon himſelf, and to the ſaid *A.* faithfully promiſed, that he the ſaid *C.* the ſaid Fifteen Pounds laſt mentioned to the ſaid *A.* would likewiſe well and truly pay and content at and upon the Day, *&c.* aforeſaid: And the ſaid *A.* in Fact ſaith, that the ſaid *C.* afterwards, to wit, the Day of, *&c.* aforeſaid, in the County aforeſaid, ſuch his Promiſes and Undertakings aforeſaid no wiſe regarding, but contriving and fraudulently intending to deceive, *&c.* hath not paid the ſaid *A.* *&c.* but to do this the ſaid *C.* (altho' by the ſaid *A.* often required) hath altogether refuſed, and ſtill doth refuſe, to the Damage of the ſaid *A.* One Hundred Pounds, as 'tis ſaid, (reciting the *Declaration* to the End;) And have you there the Names of the Pledges, and this Writ. Witneſs our ſelf at *Weſtminſter*, the Twenty-third Day of *January*, in the Seventh Year of our Reign.

Outlawry is where a Perſon is outlawed; and an Outlaw is one deprived of the Benefit of the Law,

Law, and out of the King's Protection. If when a Man is called into the Law, after an original Writ, and three Writs of *Capias*, *Alias* and *Pluries* return'd by the Sheriff *Non eſt Inventus*, and Proclamation made for him to appear, *&c.* he contemptuouſly refuſes to appear, he then is outlawed: But a Woman cannot be an Outlaw, becauſe Women are not ſworn to the King to be ever within the Law; ſo of an Infant under Twelve Years old, his Age to take the Oath of Allegiance, *&c.* And when a Perſon is reſtored to the King's Protection, he is inlawed again.

In former Times, Outlawry was ſo heinous, that none was outlawed but for Felony; the Puniſhment whereof was Death, and any Man might kill an Outlaw: But this is altered by Statute, and now Outlawries are become frequent in Perſonal Actions. As by committing Felony, by the Common Law, a Man forfeited all his Lands, Goods and Chattels; ſo he at this Time forfeits the ſame, by an Outlawry therein: And Outlawry in Civil Actions is by the Statutes only, in which Caſe the Goods and Chattels of the Perſon are only liable; as thoſe alone were chargeable in Perſonal Actions, and they are forfeited to the King, who ſhall likewiſe have the Pernancy of the Profits of the Chattels Real; tho' this ſeems rather by Conſequence, than from any other Title, for that the Party being *extra Legem* is therefore incapable to take the Profits himſelf. 1 *Inſt.* 128. *Finch* 346. 3 *Salk.* 263.

Upon an Outlawry on a Judgment in Debt, *&c.* the Perſon immediately forfeits his Goods and Chattels; but not the Profits of his Lands, or

or his Chattels Real, until Inquiſition taken: And Alienation after Outlawry, and before the Inquiſition, is a good Bar to the King, as to the Perception of the Profits. If after Outlawry in a Perſonal Action, and before Seiſure, the Party outlawed levy a Fine, or make a Feoffment; the Cogniſee and Feoffee ſhall hold againſt the King; but if the Seiſure be before the Fine levied, *&c.* it is otherwiſe. A Perſon outlawed was ſued in the Exchequer by Bill, to diſcover his Real and Perſonal Eſtate, for the Benefit of the King; and upon a Demurrer to the Bill, becauſe the Defendant is not bound to accuſe himſelf, it was over-ruled, the King having a Title by the Outlawry, which is *quaſi* a Judgment for him. *Raym.* 17. *Hardr.* 22, 101. 1 *Salk.* 395.

A Man being a Bankrupt was ſometime after outlaw'd, then a Commiſſion of Bankruptcy iſſued againſt him, but it was five Years after he had committed the Act of Bankruptcy: It was adjudged, that by the Outlawry he forfeits his Goods and Chattels, his Leaſes for Years, and Truſt in ſuch Leaſes, and the Profits of his Freehold Lands; but that this Outlawry cannot defeat any Intereſt which his Creditors had acquired in the Eſtate, by Reaſon he voluntarily ſuffered himſelf to be outlawed. And where a Perſon was indebted to one by Judgment, and to another on Bond, and was outlawed upon the Bond, and his Lands ſeiſed; the Queſtion being, whether the Judgment Creditor could extend thoſe Lands, it was held that the Outlawry ſhall be preferred, except the Judgment Creditor could ſhew any Practice between

between the Obligor and Obligee. 1 *Salk.* 108. 2 *Salk.* 495.

By the Outlawry, a Man is disabled to sue, of which all Men may take Advantage by Pleading, until his Outlawry is reversed; he can't prosecute in any Court, unless it be to reverse his Outlawry. But he may make a Will, and have Executors, or an Administrator, and an Executor may reverse an Outlawry of the Testator, where he was not lawfully outlawed; also an Executor or Administrator outlawed, is not disabled to sue Actions in Right of the Testator or Intestate: And a Mayor and Commonalty may sue for a Corporation, notwithstanding the Outlawry of the Mayor. A Plaintiff in an Action was outlawed, after he had delivered his Declaration, and the Defendant had imparled to the next Term; and then the Defendant pleaded the Outlawry in Bar to the Action, but did not say it was after the last Continuance, for which Reason the Plaintiff demurred; but the Plea was ruled good, since the Record of the Outlawry appears. 1 *Inst.* 122, 128. *Cro. Jac.* 426. *Cro. Eliz.* 575. 6 *Rep.* 53. 5 *Mod.* 11.

Where Outlawry is Pleaded, it must be *Sub pede Sigilli*, or the Plaintiff may refuse it; but if the Plaintiff accepts the Plea, he shall not afterwards Demur for that Cause. An Outlawry was Pleaded in Bar, in Action of the Case upon a Bill of Exchange, *&c.* and on Demurrer to this Plea, it was objected that it ought to have been in Abatement; for in this Action Damages are to be recovered, which are uncertain, and therefore not forfeitable by Outlawry: Though it was adjudged, that it is Pleadable in Bar, for the Debt is certain, and

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it is to be recovered in Damages: And tho' before Judgment nothing is forfeited, yet where a certain Sum is recovered in the Action, that is forfeited by Outlawry had againſt the Plaintiff, and may be Pleaded in Bar to the Execution. A Defendant Pleaded an Outlawry in Bar to Action of Trover, and held good; becauſe the Action is founded on the Property of the Goods, and theſe being forfeited by the Outlawry, tho' the Plaintiff in ſuch Action could only recover incertain Damages. 1 *Salk.* 217. 3 *Lev.* 29. *W. Jones* 238. 3 *Leon.* 205.

It hath been obſerved, that in Criminal Caſes, Felony or Treſpaſs, few Outlawries are valid, becauſe the Statutes relating to the ſame are not purſued: And as ſuing to Outlawry in Civil Actions, is practiſed only when a Defendant is not eaſy to be taken, or hath not ſufficient Eſtate in the County to be ſummoned; if, where the Party is well known, is ſufficient, and may be arreſted, the Plaintiff outlaw him, he ſhall be ordered to reverſe it at his own Charge, on Motion and Affidavit made of the Matter. By Statute, in Perſonal Actions if the Defendant be ſued in a County where he dwells not, and an Exigent is awarded, no Outlawry ſhall be had before a Writ of Proclamation be iſſued out to the County where the Defendant is, or lately was dwelling; and the Sheriff ſhall make three Proclamations for the Defendant to yield himſelf, before the Outlawry ſhall be pronounced: And all Outlawries not thus obtained are null, and may be avoided by Averment, without ſuing any Writ of Error. 2 *Salk.* 495. 2 *Nelſ. Abr.* 1224. *Stat.* 6 *Hen.* 8. *c.* 4.

In every Action Perſonal where an Exigent ſhall be awarded, a Writ of Proclamation is to be alſo awarded, and iſſue out of the ſame Court, of the ſame *Teſte* and Return with the Exigent, directed to the Sheriff of the County where the Defendant lives, and ſhall contain the Effect of the Action; and thereupon the Sheriff is to make three Proclamations, one in full County, another at the Seſſions, and the laſt (one Month at leaſt before *Quinto Exact.* by Virtue of the Exigent) at or near the Church or Chapel-Door of the Pariſh where the Defendant dwelled at the Time of awarding the Exigent, upon a *Sunday* after Divine Service; and if he dwell in no Pariſh, then in the Pariſh next adjoining to his Place of Abode: And Outlawries had otherwiſe ſhall be void. Alſo in Real Actions after Summons upon the Land, (Fourteen Days before the Return thereof) Proclamation of the Summons ſhall be made on a *Sunday*, in the ſame Manner in the Pariſh where the Land lies: And if the Summons be not ſo proclaimed, no *Grand Cape* ſhall iſſue, but an *Alias* and *Pluries* Summons, until a Summons and Proclamation. Stat. 31 *Eliz. cap.* 3.

Judgment in Outlawry is given by the Coroners of the County; for after the Defendant is *quinto exactus*, and maketh Default, the Judgment is *Ideo utlagetur per Judicium Coronatorum*; and if the Names of Coroners are not put to the Judgment of Outlawry, or it is not ſaid *Coronatoris Comitatus, &c.* it is Error: In *London* it is pronounced by the Recorder; *per Judicium Recordatoris, &c.*

To

To ſue a Perſon to Outlawry, *in Debt, Treſpaſs, &c. in* B. R.

THE two chief Terms to commence Suits to Outlawry, are *Eaſter* and *Michaelmas*; and Care muſt be taken not to begin in *Hillary* Term, for then the Defendant will not be outlawed in leſs than four Terms, becauſe of the Shortneſs of *Eaſter* Vacation; but if you begin your Suit in any other Term, the Outlawry will be finiſhed in three Terms, if your Original be returnable the firſt Return of the Term: And in *London*, one may ſue to the Outlawry three Times in the Year, the *Huſtings* there wherein Proclamation is to be made being oftner held than the County Court in the Country; for which Reaſon in ſuing to the Outlawry, moſt Actions are laid in *London*.

In this Proſecution, firſt a *Præcipe* is to be made out, if it be for Debt, or a *Pone* in Caſe, Treſpaſs, *&c.* and you carry it to the Curſitor of the County where the Action is laid, and he will make an Original thereupon; when you have your Original, it is to be carried to the proper Filazer of the County, who will make you a *Capias*, *Alias*, and *Pluries*, or for Expedition, you may make them out your ſelf; each of which muſt have Fifteen Days between the Date and Return, and are returned *Non eſt Inventus* of Courſe, and filed with the *Cuſtos Brevium*. The *Capias*, *Alias* and *Pluries* being returned of Courſe ſeverally, you carry your *Pluries* to the Exigenter of the County, who will make out your *Exigent* and *Proclamation*,

which is to be ſent down to the Sheriff of the County where the Defendant lives.

And the Writ of *Exigent* is directed to the Sheriff, where the Defendant cannot be found, nor any Thing of his within the County, whereby to be attached or diſtrained, to proclaim and call him five County-Court Days, one after another, charging him to appear upon Pain of Outlawry: It is called *Exigent*, becauſe it exacteth the Party, *i. e.* requires his Appearance or forth-coming to anſwer the Law; and if he come not at the laſt Day's Proclamation, he is ſaid to be *Quinquies Exactus*, and is outlawed. And it is ſaid, that after a Judgment in a Civil Action, the *Exigent* ſhall go forth after the firſt Writ of *Capias*; but before Judgment there muſt be a *Capias*, *Alias*, and *Pluries*.

All theſe Writs are to bear *Teſte* from the Return of each other; and your Exigent and Proclamation you carry to the proper Sheriffs, and call for their Returns at the Time when returnable, allowing five County-Court Days between the Teſte and Return of the Exigent, if the Action be laid in the Country; and five Huſtings, if it be laid in *London*. Theſe County-Courts are held but once in three Weeks; and if there be not County-Court Days, or Huſtings enough, (as it may ſometimes fall out) you muſt ſue out another Writ called an *Allocatus* from the Exigenter, to bring in the five County Days, *&c.* which is to bear Date with the Return of the former Exigent, and be returnable the next Return after the fifth County-County Days, *&c.*

In the ſeveral Proceſſes to Outlawry, you muſt take Care that they all agree with the

Original, that each of them may warrant the other; and you ought alſo to file a Warrant of Attorney for the Plaintiff, the ſame Term you ſue out the Exigent, to prevent Error in the Proceedings: And when your Exigent and Proclamation are returned, the latter is to be filed with the *Cuſtos Brevium*, and the Exigent with the Filazer of the County; whereupon the Filazer will make out your *Capias Utlagatum* into any County you deſire, where you can diſcover the Defendant hath any Eſtate: And this Writ is either general, to take the Body of the Defendant only; or Special, againſt his Body, Lands and Goods.

If Judgment be had againſt a Defendant, who to evade the Law and Execution againſt him, lurks in ſeveral Counties, he may be ſued to Outlawry after Judgment, and then on iſſuing a *Capias ad Satisfaciendum* for the Debt and Coſts, and a *Non eſt Inventus* return'd, an Exigent is made out and returned by the Sheriff; upon which you may have a *Capias Utlagatum* into as many ſeveral Counties as you pleaſe, till the Defendant is taken; when he cannot be diſcharged without making Satisfaction to the Plaintiff, a Pardon of the Outlawry, or reverſing the ſame for Error: And where a Plaintiff recovers Damages, and he againſt whom the Damages are recovered is outlawed at the King's Suit; no Pardon ſhall be granted, unleſs the Chancellor is certified that the Plaintiff is ſatisfied his Damages, by Statute 5 *Ed.* 3.

By Virtue of the Writ *Capias Utlagatum*, the Sheriff apprehends the Party outlawed, for not appearing upon the Exigent, and keeps him in ſafe Cuſtody 'till the Day of Return, and then

preſents him to the Court, there to be ordered for his Contempt; who in *C. B.* was in former Times to be committed to the *Fleet*, there to remain till he had ſued out the King's Pardon, and appeared to the Action: And by the Special *Capias Utlagatum*, the Sheriff is commanded to ſeiſe all the Defendant's Lands, Goods and Chattels, for the Contempt to the King; and the Plaintiff (after Inquiſition thereupon and returned into the Exchequer) may have the Lands extended, and a Grant of the Goods, whereby to compel the Defendant to appear, *&c. Old Nat. Br.* 154.

A Writ of Capias *in Caſe, in order to Outlawry.*

GEORGE the Second, *&c.* To the Sheriffs of *L.* Greeting: We command you, that you take *C. D.* late of, *&c.* if he ſhall be found in your Bailiwick, and keep him ſafely, ſo as you have his Body before us, on the Day, *&c.* wherefoever we ſhall then be in *England*, to Anſwer to *A. B.* in an Action of Treſpaſs upon the Caſe; and have you then there this Writ. *Witneſs*, &c.

In the *Alias*, ſay, we command you, as at *another* Time we commanded you, that you take, *&c.* ——And the *Pluries*, contains, as we have *oftentimes* commanded you, *&c.*

Form of the Writ of Exigent.

GEORGE the Second, *&c.* To the Sheriff of *L.* Greeting: We command you, that you cauſe *C. D.* late of, *&c.* to be exacted and called in your *Huſtings*, until according to the Law and Cuſtom of this Part of our Kingdom of *Great Britain* called *England*, he ſhall be outlawed, if he doth not appear: And if he appeareth, then that you take him, and cauſe him to be ſafely kept; ſo as you have his Body before us, the Day, *&c.* whereſoever, *&c.* to anſwer to *A. B.* of a Plea, *&c.* And whereof we charged you, *&c.* on the Day, *&c.* laſt paſt, and you returned that the ſaid *C.* was not found in your Bailiwick; and have you there this Writ. *Witneſs*, &c.

A Writ of Proclamation *to the County.*

GEORGE the Second, *&c.* To the Sheriff of *S.* Greeting: Whereas we lately commanded our Sheriffs of *L.* that they ſhould cauſe *C. D.* late of, *&c.* to be exacted and called in their *Huſtings*, until, *&c.* (as in the Exigent) Therefore we command you, that as by the Statute of the Thirty-firſt Year of the Reign of the Lady *Elizabeth*, late Queen of *England*, thereof it is provided, you cauſe the ſaid *C. D.* to be proclaimed three ſeveral Days, according to the Form of that Statute, whereof one of the ſaid Proclamations to be made at or near the moſt uſual Church-Door of the Pariſh where he

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is an Inhabitant, that he render himself to our aforesaid Sheriffs of *L.* so that they may have his Body before us, at the aforesaid Time, to Answer to the said *A. B.* of the aforesaid Plea; and have you there this Writ. *Witness*, &c.

A General Writ of Capias Utlagatum.

GEORGE the Second, *&c.* To the Sheriffs of *L.* Greeting: We command you, that you omit not, by Reason of any Liberty within your City, but that you take *C. D.* late of, *&c.* outlawed in *London*, the Day, *&c.* last past, at the Suit of *A. B.* in a Plea of Trespass on the Case, if he shall be found in your Bailiwick, and him safely keep, so as you have his Body before us, on the Day, *&c.* wheresoever we shall then be in *England*; to do and receive what our Court shall consider of in this Case: And have you there this Writ. *Witness*, &c.

A Special Capias Utlagatum.

GEORGE the Second, *&c.* We command you, that you omit not, by Reason of any Liberty within your County, but that by the Oath of honest and lawful Men of your County, you diligently inquire what Goods and Chattels, Lands and Tenements, *C. D.* late of, *&c.* had, *&c.* and by their Oaths make an Extent and Appraisement thereof, *&c.* and for that the said *C. D.* so outlawed, lurks and wanders up and down in your County, in Contempt of us, *&c.* Therefore we command you, that you take the

ſaid *C. D.* wherever he ſhall be found in your Bailiwick, *&c.* and ſafely keep him, ſo as you have his Body, *&c.*

To Reverſe *and* Superſede *an Outlawry, the Manner of Proceeding is thus:*

IN a Civil Cauſe, if one appears before he is returned outlawed, he may ſuperſede the Exigent, *&c.* and where a Defendant is beyond Sea, in Priſon, *&c.* the Award of the Exigent may be reverſed. And if a Party outlawed comes in *gratis* upon the Return of the Exigent, *Alias*, or *Pluries*, he may be admitted by Motion to reverſe the Outlawry, without putting in Bail: If he come in by *Cepi Corpus*, he ſhall not be admitted without appearing in Perſon, as in ſuch Caſe he was obliged to do at Common Law; or giving Bail to the Sheriff for his Appearance, and for doing what the Court ſhall order; Appearing by Attorney being an Indulgence by the Stat. 4 *&* 5 *W. & M.* and the Bail is to be ſpecial or common, in this as in other Caſes.

The Proceedings in the Reverſing of Outlawries, may be by Motion to inform the Court of ſome Fault; or Writ of Error, *&c.* But the Method of Reverſal by Writ of Error directed to the Chief Juſtice and his Aſſociate, which Writ is made out by the Curſitor, and returned by the Clerk of the Errors, *&c.* is a Way ſeldom uſed. And where a Perſon would reverſe an Outlawry, he muſt have an Attorney of Record to undertake an Appearance to a new Original; and give Special Bail, if the Debt or Damage

Damage amount to 10 *l.* or above: And if it be an Outlawry after Judgment, it cannot be reverſed until Satiſaction is acknowledged by the Plaintiff on Record, or the Defendant hath brought the Money into Court.

When a Defendant is outlawed in *B. R.* if the Proclamation is not filed, the Outlawry may be reverſed without Writ of Error, by Pleading no Proclamation filed; and upon the *Cuſtos Brevium*'s attending the Court with the File of Writs, if it appears that the Proclamation is not filed, the Court will reverſe the Outlawry; but if the Proclamation be filed, then the Defendant muſt bring his Writ of Error to reverſe it. And there are ſeveral Cauſes of reverſing an Outlawry, as by Error in returning the Exigent, which frequently happens; where the County-Court Days are miſtaken in the Proclamations; if ſufficient Time is not allowed between any of them; the Party is miſnamed, or the Sheriff's Name omitted or miſtaken; for any Error found in the Return of the Proclamation, Miſ-return or Miſ-entry thereof; Want of Returns, and Miſtakes in the Writs of *Capias*, *Alias*, *&c.* for all which, Search muſt be made with the Filazer and *Cuſtos Brevium*; and it is uſual to take Copies of all the Proceſſes from the Entries on the Rolls, and to enter upon the ſame an Averment of ſuch Defects as are found in the Proceedings.

And having found ſufficient Error in the Original or other Proceſs, you muſt put in Bail for the Defendant, (where the Debt, *&c.* is Ten Pounds) for his Appearing to a new Original within Two Terms, and pay the Debt and Damages recovered, or render his Body to Priſon,

if he be condemned in the Action: Then the File of Writs, whereon that you alledge for Error is filed, muſt be brought into Court, and the Counſel is to inform the Court of the Defect you aſſign for Error; and if the Court allow thereof, the Outlawry will be reverſed by the Senior Judge, which Reverſal with the Bail-piece, muſt be entered by the Filazer on the ſame Roll as the Proceſs of Outlawry. And the Outlawry being thus reverſed, the Defendant is diſcharged, and ſhall have Judgment to be reſtored to all which he loſt by Reaſon of the Outlawry; which ſhall take Place tho' a Term, *&c.* be ſold. But the Plaintiff may at any Time within Two Terms, on a new Original, declare againſt the Defendant for the ſame Cauſe of Action, and proceed therein as in other Actions by Original.

In proſecuting a *Superſedeas* to the Outlawry, where the Defendant appears upon the Exigent, he is not obliged to put in Bail, be the Debt what it will, but is only to enter an Appearance by Attorney with the Filazer; and the Plaintiff's Attorney muſt declare againſt him, as by Original: When the Attorney for the Plaintiff hath declared, he makes a Copy of the Declaration for the Defendant's Attorney; which being delivered, the Defendant's Attorney muſt prepare to Plead and Anſwer the ſame Term; and then the Plaintiff's Attorney draws his Iſſue, as in other Caſes; and if there be Special Pleadings, makes up the Paper-Book according to the Practice where the Proceedings are on an Original: But if it be an Iſſue, he makes up the Record, and Seals the ſame; and then gives Notice of Trial, as in Caſes by Bill, and makes

out his Writs of *Venire*, *Diſtringas* and *Subpœna*, *&c.* and proceeds to try the Cauſe. And here it is to be noted, that all Writs of *Niſi prius*, *Venire fac. &c.* and all manner of Writs of Execution after Judgment had on theſe Proceedings, muſt be returnable *in Octabis Sancti Hillar.* or ſome other Return, not on a Day certain.

A Writ of Superſedeas *on a* Capias *or* Exigent.

GEORGE the Second, *&c.* To the Sheriff, *&c.* Whereas *A. B.* by our Writ hath impleaded before us *C. D.* of a certain Treſpaſs done to the ſaid *A.* by him the ſaid *C.* as 'tis ſaid; and for that the ſaid *C.* came not before us, to anſwer to the ſame *A.* for the Treſpaſs aforeſaid, on the Exigent in your Court, is put to be outlawed, being altogether ignorant of the Exigent aforeſaid; wherefore he hath beſought us, that as he is ready in all things to abide by what is Right, we would help him in this Particular: We yielding to the humble Requeſt aforeſaid, as far as it is juſt, Command you, that if the ſaid *C.* in your County perſonally coming, ſhall render himſelf to our Priſon, as the Manner is, then the Exigent aforeſaid you ſurceaſe; and after if the ſame *C.* ſhall find ſufficient Bail or Mainpriſe for his being before us, on the Day, *&c.* at which Time our ſaid Writ of Exigent is returnable, to anſwer the aforeſaid *A.* for the aforeſaid Treſpaſs, and further to do and receive what our Court ſhall conſider of in the Premiſſes; then the ſaid *C.* from the Priſon aforeſaid, (if on that Occaſion and no other

other he be detained in the ſame) in the mean time you cauſe to be delivered, by the Mainpriſe aforeſaid; and have you there the Names of the Mainpriſe, and this Writ. *Witneſs*, &c.

Of Habeas Corpus Writs, &c. to remove Cauſes, Certiorari's, Procedendo's, and Superſedeas's in B. R.

A *Habeas Corpus* is a Writ uſed to bring the Body of a Perſon into Court, who is committed to any Gaol, either in Criminal or Civil Cauſes; and a *Habeas Corpus* removes a Perſon and Cauſe from one Court and Priſon to another.

The Writ of *Habeas Corpus cum Cauſa* will remove the Body of the Party for whom granted, and all the Cauſes depending againſt him; and if upon the Return thereof, the Officer doth not return all the Cauſes, *&c.* it is an Eſcape in him. There is alſo a Writ of *Habeas Corpus ad proſequend.* to remove a Man in order to Proſecution and Trial in the proper County, *&c.* A *Habeas Corpus ad Reſpondendum*, where any Perſon is impriſoned upon Proceſs at the Suit of another, in any Priſon except the King's Bench Priſon; and a third Perſon would ſue the Priſoner in *B. R.* this Writ removes the Priſoner from the Priſon where he was into that Court, to anſwer the Action there. And a *Habeas Corpus ad Satisfaciend.* againſt one in the *Fleet* Priſon, *&c.* to charge him in Execution, *&c.* 2. *Lill. Pract. Reg.* 2. 4.

If a Perſon is committed upon an Arreſt, a *Habeas Corpus* is grantable to remove him, without Motion; but not where committed for a Crime:

Crime: And a *Habeas Corpus* being a prerogative Writ, which concerns the Liberty of the Subject, it muſt be obey'd in Counties Palatine, *&c.* If it be not, an *Alias Hab. Corp.* will Iſſue with a great Penalty; and on the Inſufficiency of the Return of a *Habeas Corpus*, an *Alias* ſhall be granted: But before it is returned and filed, it may be amended; tho' not afterwards. 2. *Cro.* 543. 12 *W.* 3. *B. R.*

Where the Chief Juſtice of the Court of *B. R.* commits a Perſon to the Marſhal of the Court by his Warrant; he ought not to be brought to the Bar by Rule, but by *Habeas Corpus*. If there be a Judgment againſt a Defendant in the *King's Bench*, and another in *C. B.* on which he is in Execution in the *Fleet*, he may have a *Habeas Corpus* to remove himſelf into *B. R.* where he ſhall be in Cuſtody of the Marſhal for both Debts: Alſo if a Perſon be brought into the Court of *King's Bench* by *Habeas Corpus*, he ſhall not be removed thence 'till he has anſwered there; he ſhall be detained until then, and after he may be removed. *Dyer* 132. 1 *Salk.* 349, 350.

No Perſon ought to take out a *Habeas Corpus* for any one in Priſon, without his Conſent; except it be to turn him over to *B. R.* or charge him with an Action in Court. A Judge will not grant a *Habeas Corpus* in the Vacation, for a Priſoner to follow his Suits; but the Court may grant a Special Writ of *Habeas Carpus* for ſuch Priſoner to be at his Trial in the Vacation Time: And the Court will grant an *Habeas Corpus* to bring a Priſoner, not in Priſon on Execution, out of Priſon, to be a Witneſs at a Trial; tho' it is at the Peril of the Party ſuing

out

out the Writ, that he do not Eſcape. 2 *Lill. Reg.* 3. *Style* 119. *Trin.* 1640.

A Writ of *Habeas Corpus*, or other Writ to remove a Cauſe out of an inferior Court, ſhall not be allowed, unleſs delivered to the Judge of the Court before the Jury to try the Cauſe have appeared, and before any of them are ſworn: And the Writ ſhall not be obey'd, if not delivered to the Steward of inferior Courts of Record, before Iſſue or Demurrer joined, *&c.* And a Suit ſhall never be removed again, after a *Procedendo* is allowed. Nor may Suits be removed where the Thing in Demand is under 5 *l.* and Judges are to proceed in Actions in inferior Courts laid not to exceed the Sum of 5 *l.* altho' there may be other Actions againſt the Defendant, wherein the Plaintiff's Demand ſhall exceed that Sum. *Stat.* 43 *Eliz. c.* 5. 21 *Jac.* 1. 12 *Geo.* 1.

If a Steward of an Inferior Court proceeds in Actions removeable after an *Habeas Corpus* delivered and allowed, the Proceedings are void; and the Court of *B. R.* will award a *Superſedeas*, and grant an Attachment againſt the Steward for the Contempt: For the *Habeas Corpus* ſuſpends the Power of the Court below, ſo that if in ſuch Caſe they proceed, it is *coram non judice.*

In ſuing Writs of *Habeas Corpus* to remove Cauſes, you muſt firſt know the Stile of the Inferior Court, as a Direction to make out your Writ; and if it be to remove a Cauſe from the *Marſhal*'s Court, having made out your *Habeas Corpus ad faciend. & recipiend.* on a little Piece of Parchment ſtamp'd with five Shillings Stamps, and cut in Form of a Bail-piece, write your *Fiat*, thus: *To the Court of the Palace at Weſtminſter,*

ſter, &c. or, *Palace Court*, ſſ. Let a Writ of *Habeas Corpus* be made for *C. D.* to do and receive, returnable immediately.

Januar. 27. 1734. *Taylor*, Attorney.

And then make a Ticket on Paper, in this manner:

Palace Court, ſſ. A *Habeas Corpus* for *C. D.* to do and receive, returnable immediately.

Taylor.

Then you carry your *Habeas Corpus* with the *Fiat* and Note to the King's Bench Office to be ſtampt, for which you muſt pay 6 *s.* 8 *d.* in Term Time, and 7 *s.* 8. *d.* in the Vacation; afterwards you are to Seal it as other Writs, and carry it to the inferior Court to be allowed, for the Allowance whereof a Fee of 4 *s.* 10 *d.* is paid, and ſometimes more, when ſeveral Actions are againſt the Defendant, and to be returned thereon: And ſome few Days after Delivery, the Return muſt be called for, and ſpecial Bail put in at a Judge's Chamber, let the Action be never ſo ſmall, (except the Defendant be Executor or Adminiſtrator) and on putting in Bail you pay 7 *s.* 4 *d.* which being done, within four Days in Term, and ſix Days in Vacation, the Cauſe is removed to the Superior Court.

If the *Habeas Corpus* be directed to any inferior Court within Ten Miles of *London*, you make it returnable immediately; but if the Court be above Ten Miles diſtant, then the Re-

turn muſt be on a Day certain: And if the Defendant be actually a Priſoner in ſome of the Priſons belonging to the inferior Courts, he ſhall not be diſcharged out of Priſon till the Bail on the *Habeas Corpus* be accepted or juſtified in Court; and therefore in ſuch Caſe, it is beſt to prevent Difficulty therein, and the more ready and cheaper way, to put in Bail to the Action in the inferior Court which will diſcharge the Defendant, and then to bring the Writ of *Habeas Corpus*. On a *Habeas Corpus*, if Bail be not put in in Time, the Plaintiff's Attorney may ſerve the Defendant's Attorney with a Rule for a *Procedendo*; any of the Judges Clerks will give the Rule, whereupon the Plaintiff takes out a Summons to attend the Judge, to ſhew Cauſe againſt it; and if none be ſhewn on the third Summons, they make out a Writ of *Procedendo*, and carry back the Cauſe and try it in the inferior Court: So if where Bail is given, and it is diſallowed by the Court, if the Defendant do not put in better Bail; for until the Bail is allowed, the Court is not poſſeſſed of the Cauſe, ſo as to proceed.

In Caſe a Defendant cannot find Bail on an Arreſt, and would be removed to the *King's Bench* Priſon; you muſt deliver the *Habeas Corpus* there, and they will make a Return, and ſend an Officer with the Defendant to a Judge's Chamber, and a *Committitur* being made, the Judge's Tipſtaff takes the Priſoner into his Cuſtody, and charges him in the King's Bench: And where a Defendant is in Cuſtody of a Bailiff, or in *Newgate* or other Priſon, and would be turned over to the *King's Bench*, the Practice is the ſame; you deliver a *Habeas Corpus* directed

rected to the Sheriff of *Middlesex*, and he, after Search in his Office for what Writs he hath against the Defendant, will make Return of them, and then the Officer or Keeper of *Newgate*, &c. is to carry the Defendant to the Judge's Chamber, and he will be turned over, before the Judge as above.

You are to take Notice of the Writs, with which the Defendant is charged; for if it should be only a Common Pleas Writ, then you cannot turn him over to the *King's Bench*, but you must make a Bill of *Middlesex*, or an Attachment of Privilege returnable in *B. R.* and carry it to the Sheriff, and he will charge the Defendant in Custody, and return that Action with the other. And the like Course is taken to remove a Prisoner from the *Fleet* to the *King's Bench* Prison, only the Warden of the *Fleet* will often stand out two *Habeas Corpus's* before he will part with his Prisoner, and will also insist on being paid his Prison Fees; but a Judge on a Summons, may oblige the Warden to bring up the Prisoner without them: In these Cases, before you deliver your *Habeas Corpus*, it is fit to agree with the Officer for carrying the Prisoner to the Judge's Chamber, and to provide a Tipstaff in Readiness; and if you treat with the Marshal for Chamber Rent, and for the Defendant's Liberty upon Security, before you carry him over, you will find your Account therein.

The Fees usually paid are, at the Judge's Chamber 11 *s.* 8 *d.* to the Tipstaff for carrying the Defendant over 10 *s.* and to the Officer 10 *s.* and the whole Fees of suing a *Habeas Corpus* to discharge a Prisoner from Confinement, in common Cases, amount to 5 *l.* 19 *s.* 6 *d.* Of which

which for the *Habeas Corpus* 18 *s.* 4 *d.* and for the Return 9 *s.* and for the Commitment Fee 2 *l.* 6 *s.* 4 *d.* And it is the ſame Charge for a Removal to the *Fleet Priſon*; alſo you muſt pay for ſearching, if there be any other Actions entered againſt the Defendant at the Sheriff's Office; and if he be a dignified Perſon, there is a Fee claimed by the Warden of 5 *l.* for the Commitment, and Liberty of the Rules.

A Writ of Habeas Corpus *returnable in Court.*

GEORGE the Second, *&c.* To the Mayor, Aldermen, *&c.* Greeting: We command you, and every of you, that you have before us, at *Weſtminſter* on *Tueſday* next after the *Octave* of St. *Hillary*, under ſafe and ſecure Conduct, the Body of *C. D.* who is detained in our Priſon under your, or one of your Cuſtodies, as 'tis ſaid, together with the Day and Cauſe of his being taken and detained, by whatſoever Name the ſaid *C.* ſhall be charged in the ſame, to anſwer to *A. B.* in an Action of Debt, *&c.* And further to do and receive what our Court before us ſhall then and there conſider of in this Caſe; and have you there at the ſame Time this Writ. Witneſs *Philip* Lord *Hardwick* at *Weſtminſter*, the Day of, *&c.* in the Eight Year of our Reign.

If the Writ be returnable *immediately*, before the Lord Chief Juſtice, then ſay, That you have before our beloved and faithful *Philip* Lord *Hardwick*, our Chief Juſtice aſſigned to hold

Pleas

Pleas in our Court before us, at his Chamber in *Lincoln's Inn*, immediately after the Receipt of this Writ, *&c.* to do and receive all and ſingular thoſe Things, which our ſaid Chief Juſtice ſhall then and there conſider of, *&c.*

And if it be returnable immediately before one of the Puiſne Judges, ſay; Before *Edmund Probyn*, Knt. one of our Juſtices aſſigned to hold Pleas in our Court before us, at his Chamber ſituate in *Serjeants Inn, Chancery-Lane*, immediately after, *&c.*

In *Vacation* it is returnable at a Day certain,—Have before, *&c.* on *Monday* the Sixth Day of *January*, about the Hour of Three of the Clock in the Afternoon of the ſame Day, to do and receive, *&c.*

A Habeas Corpus *to remove a Perſon from the* Fleet *to the* King's Bench *Priſon.*

GEORGE the Second, *&c.* To the Warden of our Priſon of the *Fleet*, Greeting: We command you, that you have before us at *Weſtminſter* on the Day, *&c.* the Body of *C. D.* under ſafe and ſecure Conduct, who is ſaid to be detained in our Priſon under your Cuſtody, together with the Day and Cauſe of his being taken and detained, by whatſoever Name the ſaid *C. D.* ſhall be charged therein, to Anſwer to *A. B.* in an Action of Treſpaſs, and alſo to a Bill of the ſaid *A.* by him exhibited againſt the ſaid *C.* for a Debt of Sixty Pounds, according to the Cuſtom of our Court before us; and further to do and receive what our ſaid Court before us ſhall in this Behalf then and there conſi-

der of, and have you then there this Writ. Witneſs, &c.

The *Habeas Corpus ad Proſequend.* runs thus: That you have before, &c. the Body of *A. B.* &c. to proſecute his Bill againſt *C. D.* in an Action of Debt, as far as he hath begun it in our Court before Us, that we may be able to proceed further in this Behalf, as far as is Right, and we ſhall ſee fit to be proceeded; and have you there, &c.

A *Habeas Corpus ad Satisfaciendum*— To make Satisfaction to *A. B.* for Twenty Pounds, &c. for his Damages which he hath ſuſtained, as well by reaſon of the ſaid *C.*'s not performing certain Promiſſes and Undertakings made by the ſaid *C.* to the ſaid *A.* at, &c. aforeſaid in your County, as for his Expences and Coſts laid out by him about his Suit in that Particular, whereof the ſaid *C.* is convicted, as appears to us of Record; and further to do and receive, &c.

A Writ of Habeas Corpus *for a Witneſs to Teſtify.*

GEORGE the Second, &c. To *R. M.* Eſq; Marſhal of our *Marſhalſea* before us being, Greeting: We command you, that the Body of *E. F.* who is detained in our Priſon under your Cuſtody, as it is ſaid, by whatſoever Name the ſaid *E.* may be charged in the ſame Priſon, you have under ſafe and ſecure Conduct before our faithful and beloved *Philip* Lord *Hardwick*, our Chief Juſtice, aſſign'd to hold Pleas in our Court before us at *Weſtminſter*, in the great Hall

of

of Pleas there, on *Friday* the First Day of *October*, (the Day of the Sittings) at Eight of the Clock in the Forenoon of the same Day, there to testify the Truth, to the best of his Knowledge, in a certain Cause now depending in our Court before us, then and there to be tried between *A. B.* Plaintiff, and *C. D.* Defendant, in an Action of Trespass, *&c.* And then immediately after the said *E. F.* shall have then and there given his Evidence before the said Chief Justice, to return him the said *E. F.* to the same Prison, under the like safe and secure Conduct; and have you there at the same Time this Writ, *&c.*

A Habeas Corpus *on a* Cepi Corpus.

GEORGE the Second, *&c.* To the Sheriff of *M.* Greeting: We command you, that you have before us at *Westminster*, on *Tuesday* next after the Morrow of the Purification of the Blessed Virgin *Mary*, the Body of *C. D.* taken by you, and in our Prison detained under your Custody, (as by your Return lately sent into our Court before us, you have charged your self with him) to Answer to *A. B.* of a Plea of Debt, *&c.* or to satisfy, *&c.* as the Case is; and further to do and receive, *&c.* and have you there, *&c.*

A *Certiorari* is a Writ issuing to an inferior Court, to certify the Record of a Cause there depending, that Justice may be done therein, upon Complaint that the Party who seeks the said Writ hath received hard Usage, or is not like to

have an indifferent Trial in the ſaid Court. *F. N. B.* 242.

And where the Court, which awards the *Certiorari*, cannot hold Plea upon the Record, there but a Tenor thereof ſhall be certified; becauſe otherwiſe if the Record it ſelf was removed into *B. R.* as it cannot be ſent back, there would be a Failure of Right afterwards: But a Record ſent by *Certiorari* into the *King's Bench* may be certified into *Chancery*; and from thence be ſent by *Mittimus* to an inferior Court, where an Action of Debt is brought in the inferior Court, to which the Defendant Pleads that the Defendant had recover'd in *B. R.* and the Plaintiff replies, *Nul tiel Record, &c.* 1 *Danv. Ab.* 792. 1 *Saund.* 97, 98.

The Writ of *Certiorari* is to be granted on Matter of Law, and not Matter of Fact; It doth not lie to remove a Record out of an inferior Court, after a Verdict given: And if the Party doth not uſe it till after the Jury are ſworn, he loſes the Benefit of it. Sometimes a *Certiorari* lies without moving the Court; but in many Caſes there muſt be a Judge's Hand for it; and in Vacation time, this Writ may be granted by any of the Judges of *B. R.* and Security is to be found before Allowance of it; alſo ſometimes Notice is to be given to the other Side. 1 *Lill. Pract. Reg.* 254. *Mod. Caſ.* 16.

In an extraordinary Caſe, the Court on Motion will grant a *Certiorari* to remove a Judgment given in an inferior Court, when the ordinary Way of taking out Execution is hindered. Alſo *Certiorari* lies to remove and certify Convictions, of which a Writ of Error lieth not: But it is never ſued out after Writ of Error, only where

where Diminution is alledged. And where a *Certiorari* is return'd before a Judge at his Chamber, if there be no Proceedings therein afterwards; the Plaintiff ſhall have a *Procedendo* before ſuch Judge, and is not to move the Court where the Cauſe is removed.

A Rule of Courſe may be entered, at the Return of the *Certiorari*, for the Defendant to put in Bail within Six Days, or *Procedendo* to iſſue to the inferior Court: And Returns of *Certiorari's* are under Seal, and the Remedy for a falſe Return is Action of the Caſe, *&c.*

A Certiorari *to remove a Plaint and Attachment.*

GEORGE the Second, *&c.* To the Mayor, Aldermen and Sheriffs of the City of *L.* Greeting: We being deſirous for certain Reaſons, that there ſhould be certified to us, as well a certain Plaint levied or affirmed in our Court before you, or ſome of you, againſt *C. D.* Citizen and Haberdaſher of your City, at the Suit of *A. B.* in an Action of Debt, as alſo a certain Attachment made thereupon for Forty Pounds, *&c.* on the Money, Goods or Chattels of the ſaid *C. D.* in the Hands of the ſaid *A. B.* or of any other Perſon or Perſons whatſoever in our ſaid Court before you, ſome or one of you; do therefore command you, that you certify to us on *Wedneſday* next after Fifteen Days from the *Holy Trinity* at *Weſtminſter* the ſaid Plaint and Attachment, with all things concerning the ſame, in as full and ample Manner as the ſame now remain in our Court before you, together with this Writ, that we may cauſe to

be further done thereupon what ſhall appear to us of Right ought to be done. Witneſs, &c.

If *returnable* before a Judge at his Chamber, then the Writ runs — We command you, and every of you, that immediately after the Receipt of this Writ, you ſend the ſaid Plaints and Attachments, together with all things touching the ſame, in as full and ample Manner as they now remain before you, or any or either of you, before Sir *Francis Page*, Knt. one of our Juſtices aſſigned to hold Pleas in our Court before us, at his Chambers, ſituate in *Serjeants Inn* in *Fleetſtreet*; that he our ſaid Juſtice may cauſe to be done in this Particular, what ſhall appear to him of Right ought to be done; and have you there at the ſame Time this Writ.

A Certiorari to certify the Record of a Judgment.

GEORGE, &c. To the Mayor and Sheriffs of our City of *E.* and to every of them, in our Court at the Guildhall there, Greeting; Whereas *A. B.* had lately in our ſaid Court of our ſaid City, according to the Cuſtom of the ſame Court, impleaded *C. D.* late of &c. in an Action of Debt upon Demand of Fifty Pounds, and thereupon in our ſaid Court before you, obtained Judgment againſt the ſaid *C.* for the Recovery of the ſaid Debt; and we for certain Reaſons, being deſirous that the ſaid Record ſhould by you be certified to us, do command you, that you ſend under your Seals the Record of the ſaid Recovery, with all things touching the

the ſame, into our Court before us at *Weſtminſter* on the Day, *&c.* plainly and diſtinctly, and in as full and ample manner as it now remains before you, together with this Writ; ſo that we on the Part of the ſaid *A.* may be able to proceed to the Execution of the ſaid Judgment, and to do what ſhall appear to us of Right ought to be done. Witneſs *Philip* Lord *Hardwick*, *&c.*

A *Procedendo* is a Writ which lieth where an Action is removed out of an inferior Court to a ſuperior, by *Habeas Corpus*, or *Certiorari*, *&c.* to ſend down the Cauſe to proceed upon it, it not appearing to the higher Court that the Suggeſtion is ſufficiently proved.

If a *Certiorari* or *Habeas Corpus* to remove a Cauſe, be return'd before a Judge, the Judge will give a Rule thereupon to put in good Bail by ſuch a Day; which if the Defendant, upon ſerving his Attorney with a Copy of the Rule, doth not do, then the Judge will ſign a Warrant for a *Procedendo*, to remove the Cauſe back again where the Action was firſt laid, and proceed notwithſtanding the *Hab. Corp.* or *Certiorari*. But it had been held, that by the Common Law if a *Certiorari* and the Record be filed, no *Procedendo* can go to the inferior Court, to revive the Proceedings. 2 *Lill. Reg.* 377. *Hill.* 6 *Geo.* 1.

Where a Cauſe by the Cuſtom of *London* is actionable, and will not bear an Action at Common Law, if upon a *Habeas Corpus* or *Certiorari*, brought for removing ſuch Cauſe into the Court of *B. R.* it doth ſo appear to the Court; this Court will grant a *Procedendo* to Authoriſe the Court of *London* to proceed in the Matter;

otherwiſe the Party that brought the Action would be without Remedy. And this Writ is called a *Procedendo in Loquela*: Alſo there is a Writ of the ſame Nature, where a Defendant in an Action prays in Aid of the King, the Judges are not to proceed until they receive a *Procedendo in Loquel.* And tho' they may then proceed and try the Iſſue joined, they ſhall not give Judgment, without a Writ for that Purpoſe. *New Nat. Br.* 342.

And a *Procedendo ad judicium* lies, where the Judges of any Court delay the Party Plaintiff or Defendant, and will not give Judgment in the Cauſe when they ought to do it: When the Authority of Juſtices, &c. is ſuſpended by *Superſedeas*, their Power may be reſtored by a Writ of *Procedendo*.

A Procedendo *to the Sheriff's Court of* London.

GEORGE the Second, &c. To the Mayor, Aldermen and Sheriffs of the City of *London*, Greeting: Whereas, or alſho' by our Writ we lately commanded you, that you ſhould have before our Beloved and faithful *Philip* Lord *Hardwick*, our Chief Juſtice aſſigned to hold Pleas in our Court before us, at his Chambers ſituate in *Lincolns Inn*, in *Chancery Lane*, *London*, immediately after the Receipt of the ſaid Writ, the Body of *C. D.* detained in our Priſon under your Cuſtody, as 'tis ſaid, together with the Day and Cauſe of taking and detaining him, by whatſoever Name the ſaid *C.* ſhould be charged in the ſame, to do and receive what our

ſaid Chief Juſtice ſhould conſider of in that Particular; nevertheleſs becauſe it appeared to our Juſtices aſſign'd to hold Pleas in our Court before us, that the ſaid *C.* doth not in due Manner proſecute his Writ of *Habeas Corpus*, at the Day and Place aforeſaid, &c. We command you, and every of you, that in whatſoever Plaints or Suits are now levied or depending in our Court before you, or any of you, againſt the ſaid *C. D.* at the Suit of *A. B.* you proceed with Effect, according to the Laws and Cuſtoms of our Kingdom of *England*, (or of our City of *London* aforeſaid) notwithſtanding any Writ lately directed to you, in manner aforeſaid, to the contrary. *Witneſs*, &c.

A Writ of Procedendo ad Judicium.

GEORGE, &c. To the Mayor, Aldermen and Sheriffs of *L.* Greeting: Becauſe in the giving of Judgment in the Plea which is before you, in our Court of *Huſtings* of *London*, without our Writ, between *A. B.* and *C. D.* of a certain Treſpaſs done by the ſaid *C.* to the ſaid *A.* as is ſaid, long Delay hath been made to the great Damage of him the ſaid *A.* as by his Complaint we have received Information; We command you, that that Judgment, according to the Laws and Cuſtoms of our City aforeſaid, to give you proceed, &c.

A *Superſedeas* lies in a great many Caſes, and ſignifies in general a Command to ſtay ſome ordinary Proceedings at Law, on good Cauſe ſhewn, which ought otherwiſe to proceed.

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It is uſed for the ſtaying of an Execution, after a Writ of Error allowed, and Bail put in, *&c.* If there be two Writs of Executions executed upon one Judgment, on Affidavit of the Matter, and moving the Court, a Writ of *Superſedeas* ſhall be granted; for there cannot be two ſuch Executions, but where the Plaintiff is deprived of the Benefit of the firſt, either by the Death of the Defendant, or by ſome Act in Law. Where an Execution was well awarded, but ill ſerved, a *Superſedeas* has been denied. *Stile* 255. *Hetl.* 30.

When a *Certiorari* is delivered, it is a *Superſedeas* to inferior Courts: And the Juſtices, *&c.* to whom a *Certiorari* is ſent, are to iſſue a *Superſedeas* to the Sheriff to ſtop Execution of any Award, *&c.* If a Sheriff holds Plea of 40 *s.* Debt in his County-Court, the Defendant may ſue forth *Superſedeas*, to ſtay his Proceedings; or after Judgment, he may have a Writ of *Superſedeas* directed to the Sheriff, requiring him not to make Execution upon ſuch Judgment, and upon that an *Alias*, a *Pluries*, and Attachment, *&c.* There is a *Superſedeas* where *Audita Querela* is ſued: And if a privileged Perſon is ſued in any Juriſdiction foreign to his Privilege, he may bring his *Superſedeas*. *New Nat. Brev.* 532. *Vaugh.* 155.

Superſedeas may be granted by the Court, for ſetting aſide an erroneous Judicial Proceſs, *&c.* alſo a Priſoner may be diſcharged by *Superſedeas*; as a Perſon is impriſon'd by the King's Writ, ſo he is to be ſet at Liberty; and a *Superſedeas* is as good Cauſe to diſcharge a Perſon, as the firſt Proceſs is to arreſt him: It is falſe Impriſonment to detain a Man in Cuſtody, after

after a *Superſedeas* delivered, &c. *Finch* 453. 2 *Cro.* 379.

To diſcharge a Priſoner, for the Plaintiff's not Declaring againſt him in two Terms, you muſt get a Certificate from the Sheriff in whoſe Priſon the Defendant is, that there is no Declaration delivered againſt him in his Cuſtody, &c. and then get a Certificate from the Clerk of the Declarations at the King's Bench Office, that no Declaration is filed; afterwards make out a common Bail-piece, with this Addition:

Becauſe the Plaintiff hath not declared within two Terms, let a Writ of Superſedeas *be made.*

This the Judge ſigns, and is the Authority for Signing the Writ; and at the ſame Time you ſign the Writ, you file the Certificates, then carry the *Superſedeas* to the Sheriff, who will thereupon make out a Diſcharge for the Defendant to the Keeper of the Priſon. See *Stat.* 8 & 9 *W.* 3. and *Ord. Trin.* 2 *Geo.* 1.

If a Declaration hath been delivered againſt a Defendant in Cuſtody of any Sheriff, &c. and no further Proceedings are had to Tiral within three Terms; or if after Judgment, he be not charged in Execution in two Terms; then upon taking out and ſerving on the Plaintiff's Attorney a Summons from a Judge, to ſhew Cauſe why a Writ of *Superſedeas* ſhould not be granted to diſcharge the Defendant out of Cuſtody, for want of Proſecution; the Judge will, if Cauſe be not ſhewn to the contrary, order ſuch Writ on filing common Bail.

But if a Defendant be in Cuſtody of the Marſhal of *B. R.* and there is no Proſecution as

as before, in that Case on a Summons and Service thereof, and no Cause being shewn to the contrary, the Judge will order the Defendant to be discharged on filing common Bail, without any Writ of *Supersedeas*.

A Supersedeas to a Writ of Execution.

GEORGE the Second, *&c.* To the Sheriff of *M.* Greeting: Whereas we lately commanded you by our Writ, that you should take *C. D.* late of, *&c.* in your County, if he should be found in your Bailiwick, and safely keep him, so that you might have his Body before us, at *Westminster*, on *Wednesday* next after the Morrow of the *Holy Trinity* then to come, and now last past, to make Satisfaction to *A. B.* for Fifty Pounds, which in our Court before us, were awarded to the said *A. B.* for his Damages that he had sustained, by Reason of not performing certain Promises and Undertakings, made by the said *C.* to the said *A.* at, *&c.* in your said County, whereof he is convicted; and because it sufficiently appears to us, that our Writ to take his Body to make Satisfaction, was unduly and clandestinely sued out of our said Court before us: Therefore we command you, that you altogether forbear taking, imprisoning, or any ways molesting the said *C.* by Reason of the Premisses, or in any Manner executing the said Writ, and making a Return thereof to us, *&c.* And if you shall have taken the said *C.* upon that Occasion, and no other, then do you without Delay discharge him, and permit him to go at large. *Witness*, &c.

A Writ of Superſedeas *for Want of Declaring upon a* Latitat.

GEORGE the Second, *&c.* To the Sheriff of *D.* Greeting: Whereas we lately commanded you to take *C. D.* if he could be found in your Bailiwick, and ſafely keep him, ſo as you might have him before us at *Weſtminſter*, on the Day, *&c.* laſt paſt, to anſwer to *A. B.* Gent. in an Action of Treſpaſs, and alſo to a Bill of the ſaid *A.* to be exhibited againſt the ſaid *C.* for a Debt of One Hundred Pounds, according to the Cuſtom of our Court before us; and becauſe the ſaid *A.* hath not declared againſt him the ſaid *C.* within two Terms, altho' the ſaid *C.* in the ſame Court before us, came and put in common Bail, at the Suit of the ſaid *A.* in the ſaid Action: Therefore we command you, that from taking, attaching, impriſoning, or any ways moleſting the ſaid *C.* on that Occaſion, in any Manner howſoever, at the Suit of him the ſaid *A.* you altogether ceaſe; and if upon that, and no other Occaſion, you have taken and impriſoned him, and there detain him, then without Delay do you cauſe the ſaid *C.* to be delivered out of Priſon, under the Penalty attending the Neglect thereof. Witneſs *Philip* Lord *Hardwick*, &c.

A Superſedeas *on putting in Bail.*

GEORGE, *&c.* To the Sheriff of *S.* Greeting: Whereas by our Writ we lately commanded you to take *C. D.* if he ſhould be found

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in your Bailiwick, and keep him ſafely, ſo that you might have his Body before us at *Weſtminſter*, on the Day, *&c.* laſt paſt, to anſwer to *A. B.* in an Action of Treſpaſs upon the Caſe, *&c.* and becauſe the ſaid *C.* appeared in our Court before us, at the Day and Place contained in the ſaid Writ, to anſwer to the ſaid *A.* according to the Form and Effect thereof; therefore we command you, that you altogether forbear taking, attaching, impriſoning, or further moleſting the ſaid *C.* on that Occaſion; and if you have taken him on that, and no other Occaſion, then without Delay cauſe him to be diſcharged from the Priſon in which he is ſo detained, under the Pain attending the Neglect thereof. *Witneſs*, &c.

Of Prohibitions and Proceſs therein, in B. R.

A Prohibition is a Writ iſſuing out of the *King's Bench* or Common Pleas, to forbid the Spiritual Court, Admiralty Court, *&c.* to proceed in a Cauſe there depending, on ſuggeſting that the Cogniſance thereof belongs not to the ſaid Courts, but to the Common Law Courts. *F. N. B.* 39.

The Court of *B. R.* or any of the King's Courts, that may award Prohibitions, on Information by the Plaintiff or Defendant, or by a Stranger, that any Court Temporal or Eccleſiaſtical do hold Plea in any Cauſe where they have no Juriſdiction, may prohibit that Court from proceeding therein: And the Writ of Prohibition is directed not only to the Judge, but

the Parties; and if the Judge of the inferior Court, or the Party, proceeds notwithſtanding this Writ, an Attachment may be had againſt them, or Action of the Caſe. But on a Prohibition in the Spiritual Court, the Party may appear, and take a Declaration upon the Suggeſtion, and go to Trial; and then if it be found againſt the Plaintiff in the Prohibition, a Writ of *Conſultation* ſhall be awarded with Coſts, which is in Nature of a *Procedendo*. 2 *Inſt.* 229, 601. 4 *Rep.* 127. 2 *Lill. Pract. Reg.* 384.

A Prohibition lies in all Cauſes wherein a *Habeas Corpus* doth lie at Common Law; but is moſt commonly granted to the Spiritual Courts, where a Cauſe belongs to the Temporal Juriſdiction: It is a Remedy and grantable in ſeveral Inſtances. 1. Where the Matter in Diſpute is triable wholly at Common Law, which is to be preferred before the Civil Law. 2. When the Spiritual Court, Court of Admiralty, or ſome inferior Temporal Court, exerciſe a Juriſdiction which they have not at all; or exceed that Juriſdiction they have, either by taking Cogniſance of more than they ought to do, or of Matter out of their Juriſdiction in Point of Limits as to Place. 3. For that ſuch Courts do not in their Manner of Proceeding diſtribute Juſtice to the Parties, according to the Proviſion of our Common or Statute Laws. 4. Where one inferior Juriſdiction infringes upon another. 2 *Lill. Reg.* 385. *Roll. Abr.*

In Caſes that the Temporal Courts cannot hold Plea of themſelves, or give Remedy to the Party, they may grant Prohibitions: A Prohibition may be granted to the Court of the Lord Marſhal, if it exceedeth its Juriſdiction; ſo it is

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ſaid of the Court of Conſtable and Marſhal. And the Court of *B. R.* may by the Common Law grant a Prohibition to the Court of Admiralty, to ſtay their Proceedings, if they hold Plea of any Matter which the Juriſdiction of their Court doth not extend to; and the Defendant there may have a Prohibition, after he hath pleaded, altho' he cannot have it to an inferior Court; for the Admiralty Court doth draw the Matter *ad aliud Examen*, that is to try it by the Civil Law; and therefore that the Common Law may not be injured, this Court will uſe their Authority at any Time, for ſtaying Proceedings in the Admiralty. *Trin.* 23 *Car. B. R.* 2 *Lill. Reg.* 387.

If the Court of Admiralty proceeds on a Promiſe, *&c.* made *infra Corpus Comitatus*, or in any Matter which is not Maritime, tho' the Thing were done upon the Sea, the Court of *King's Bench* will grant a Prohibition; the Admiralty having Juriſdiction only in Maritime Cauſes, *viz.* Such as concern Sea Affairs, and not of all Matters done at Sea, as Contracts, Properties, *&c.* Prohibition doth not lie to the Admiralty, to ſtop Proceedings on a Bond made beyond Sea, ſued there; nor for a Suit for Mariners Wages, *&c.* 3 *Leon.* 514. 3 *Lev.* 60.

A Prohibition may be granted to the Spiritual Court, to prevent any Proceedings which are not agreeable to the Common Law, and even after Sentence given in a Cauſe in that Court; but the Court applied to will not do it until they have heard Counſel on both Sides, altho' before Sentence they grant it upon a bare Suggeſtion of the Party, if the Matter will bear it; for a Sentence in an Eccleſiaſtical Court is

like unto a Judgment at the Common Law, and presumed to be given upon mature Deliberation. And where the Ecclesiastical or Spiritual Courts proceed wholly on the Canons, they shall not be prohibited; tho' if they proceed upon Temporal Matters, or act in Derogation of the Common Law, by Questioning a Matter not triable by them, &c. Prohibition shall be granted. 2 *Roll. Rep.* 439. 1 *Bulst.* 159.

Where the Ecclesiastical Court hath the sole Cognisance of a Cause, their Proceedings are not examinable at Common Law, tho' erroneous; and no Prohibition will lie in such Case, but an Appeal to the Delegates: And when the principal Cause is of Ecclesiastical Cognisance, they may try Matters triable at Law, which come in incidentally. But it has been ruled, that where a Thing incident to a Suit in the Spiritual Court is of a Temporal Nature, they must try it in the same Manner in that Court, as it would have been tried at Law, or a Prohibition shall go; and if the Matter incidental is of a Spiritual Nature, they are to try it according to their own Law: For Instance, if they require two Witnesses to the Proof of a Revocation of a Will, Prohibition will not lie, because such Proof is required at Law; but if they require two Witnesses to prove a Release, or refuse to admit the Proof of one Witness to the Payment of a Legacy, &c. a Prohibition may be had. *March* 92. *Show.* 158, 172. 3 *Salk.* 288.

On a Libel in the Ecclesiastical Court for Tithes, the Defendant pleaded an Award, and pray'd a Prohibition, the Award being Matter triable at Law; but it was denied: And it is

the ſame if a Suit is for any Legacy, and the Defendant ſuggeſts Payment for a Prohibition, or if an Acquittance is pleaded; here no Prohibition ſhall be granted, becauſe where the Spiritual Court hath a Juriſdiction of the original Matter, if any ſubſequent Matter ariſe, and which is triable at Law, that ſhall not deprive the Spiritual Court of their Juriſdiction; tho' if that Court ſhall adjudge otherwiſe upon an Acquittance, or Award, than according to the Common Law, a Prohibition will be granted to the Defendant. 1 *Roll. Rep.* 12. *Moor* 413.

It has been held, that where a Thing triable at Law is Collateral to the Complaint, and of which the Spiritual Court have original Juriſdiction, they may not be prohibited; as where the Libel is for the Tithe of ſuch a Cloſe of Land, here they have an original Juriſdiction of the Cauſe, *i. e.* for Tithes; then the Defendant pleads that it is not his Cloſe, but the Cloſe of another Perſon; this is triable by the Common Law; but as it is Collateral to the original Cauſe, it ſhall be tried in the Spiritual Court. *Sid.* 89. 3 *Neſſ. Abr.* 12.

In a Suggeſtion for a Prohibition to the Spiritual Court in a Cauſe of Tithes, and other Spiritual Profits, the Suggeſtion muſt be made good to the Court by two ſufficient Witneſſes, within ſix Months after the Prohibition granted; provided it doth not contain a Negative. 2 & 3 *Ed.* 6. *c.* 13. But by the Statute *Articuli Cleri* for Tithes, (if the Right ariſeth not from the Rights of Patronage, or they amount not to a fourth Part, &c.) Oblations, Mortuaries, Commutation of Corporal Penance, Defamation, &c. no Prohibition ſhall be granted. 9 *Ed.* 2. 2 *Inſt.*

2 *Inst.* 619, 662. 4 *Rep.* 20. See 2 *Lutw.* 1043, 1057, &c.

A Parſon grants to one by Deed, that he ſhall be diſcharg'd of Tithes of his Lands, and after he ſueth him for them in the Spiritual Court; it is ſaid the Defendant ſhall not have a Prohibition, for he may ſuggeſt this Matter in the Spiritual Court to diſcharge himſelf: Tho' if it were upon a Compoſition made before Time of Memory, and now the Parſon ſues for the Tithe of thoſe Lands, there he ſhall have a Prohibition againſt the Parſon, &c. *Mich.* 8 *Ed.* 4. 14. If in ſuing for Tithes, &c. the Boundaries of Pariſhes are queſtion'd, Prohibition lies; and ſo when a Cuſtom is pleaded in the Eccleſiaſtical Court: In caſe Property, or the Freehold of an Office, &c. comes in Queſtion, a Prohibition ſhall go to the Spiritual Court. 1 *Cro.* 228. 2 *Lev.* 103. 4 *Leon.* 261.

If a Suit is for a Penſion, it being merely Spiritual, no Prohibition ſhall be granted. But where Matters are mixed, a Prohibition may be had for Part, tho' not for the Whole, if it can be ſevered: Yet if two Things are ſo intermix'd, that the Sentence in the Spiritual Court cannot ſtand for one, unleſs for both, a Prohibition may be granted for both. If a Man ſues for the Probate of a Will, in the Spiritual Court, and there are Lands deviſed in the Will, and other Perſonal Things, a Prohibition ſhall iſſue as to the Lands, and not as to the Reſidue: But the contrary hath been reſolved, for a Will is entire, and therefore a Prohibition was refuſed. *Cro. Jac.* 666. 2 *Roll. Abr.* 315, 316. 1 *Mod.* 90.

Where a Vicar ſues a Pariſhioner for Tithes in the Spiritual Court, and the Parſon appro-

priate appears *pro interesse*, and prays a Prohibition, it shall be granted. *Hill.* 14 *Car. B. R.* There are Prohibitions concerning Marriages, and to dissolve a Marriage, &c. 2 *Lutw.* 1059, 1075. Tho' it is a Rule, that a Prohibition shall not be granted, where the Proceedings in the Ecclesiastical Court are not against the Law of the Land, nor the Liberty of the Subject. After a Consultation duly granted, no Prohibition shall be had, by the Stat. 50 *Ed.* 3. *c.* 4. which ordains, that but one Prohibition shall lie in one Cause: If it is apparent that the Consultation was unduly obtained, then it is otherwise. 1 *Leon.* 130.

Formerly many Prohibitions were granted for Defamatory Words, in calling Women Whores, &c. but of late such Prohibitions have been denied; the Spiritual Court having a Jurisdiction in Cases of Whoredom, they shall not be prohibited: But by the Custom of *London*, it is Actionable to call a Woman Whore; and therefore where the Libel is for that Word there, a Prohibition will be granted. And where a Suit in the Spiritual Court is for Defamation, the Matter ought to be intirely of Ecclesiastical Cognisance, or a Prohibition will lie. 1 *Mod.* 21. 2 *Lutw.* 1039. *Moor* 873. 3 *Salk.* 288.

If the Spiritual Court refuse a proper Plea to a Libel, &c. and where the Libel is too general, these are good Causes for Prohibition: And it is always grantable for denying the Copy of a Libel, because the Party ought to know whether the Matter is within the Jurisdiction or not, and how to Answer. *Hob.* 307. *Hardr.* 364. 2 *Salk.* 553.

As

As to the particular Proceedings *on* Prohibitions:

IT is held, that anciently in *B. R.* there were no Declarations or Demurrers upon Prohibitions; and therefore Conſultations were granted on Motions. And in Caſes of Prohibitions, where they were granted upon a Motion, the ancient Courſe was that the Party prohibited ſued out a *Scire facias, Quare Conſultatio non debet contedi poſt Prohibitionem*; in which Writ, the Suggeſtion was recited, and alſo the Prohibition granted thereon *ad Damnum* of the Party: Afterwards this Practice was altered, and the Courſe of Proceeding came to be thus, *viz.* Upon granting a Prohibition to the Plaintiff, the Court bound him in a Recogniſance to proſecute an Attachment of Contempt againſt the Defendant for ſuing in the Spiritual Court, after a Prohibition granted, and then to declare upon the Prohibition; ſo that he, who was the Defendant in that Court, now becomes Plaintiff in the Court above. 3 *Salk.*

The Suggeſtion for a Prohibition muſt be certain, as to the Ground of the Complaint, that ſuch a Thing was done or offered, *&c.* for upon an uncertain Suggeſtion, no Prohibition can be granted, or Iſſue taken thereon if it ſhould be falſe: But tho' a Suggeſtion ought to be certain, yet ſuch preciſe Certainty is not neceſſary therein as in a Plea, or even in a Declaration upon a Matter at Common Law. The Suggeſtion muſt not vary the Matter complained of in the Libel; if it does, the Court will grant a

Conſultation; nor muſt there be any Variance between the Suggeſtion and Declaration, the Suggeſtion or Surmiſe being inſtead of a Writ. If a Suggeſtion be not proved within ſix Kalendar Months, according to the Statute, a Conſultation will be granted; but this, 'tis ſaid, does not extend to Matters at Common Law: And ſo ſtrict Proof is not required in the Caſe of a Prohibition, as in other Caſes.

It is not ſufficient to ſhew in the Suggeſtion, that by Virtue of Letters Patents, &c. the Party was ſeiſed of Land; they muſt be either Pleaded *in hæc Verba*, or produced in Court: If you move for a Prohibition, as to more than appears upon the Face of the Libel, to be out of their Juriſdiction, there muſt be an *Affidavit* of the Truth of the Suggeſtion; tho' where the Matter ſuggeſted appears upon the Face of the Libel, there needs no Affidavit. Where the Suggeſtion contains two different Matters, each of them a Foundation for a Prohibition, it is ill; and if a Suggeſtion be inſufficient, the other Party need not demur to it, and ſo have it entered on Record, but he may ſhew the ſame to the Court, which will diſcharge the Rule. A Suggeſtion cannot properly be amended, after a Prohibition is gone; yet if the Court ſees there is Cauſe for a Prohibition, they will give Leave to amend the Suggeſtion.

No Prohibition can be had till the Libel is in Court; and if the Libel be inſufficient in the Spiritual Court, altho' the Declaration aids the Matter and makes it ſufficient, the Prohibition ſhall ſtand: But if the Declaration varies from the Suggeſtion, it is a Diſcontinuance, and a Conſultation ſhall go of Courſe. In Caſe the

Prohibition

Prohibition appears to be void on the Face of it, the Court will grant the Writ of Conſultation without a Plea: Tho' where a Prohibition is not good, but defective in Form, or in the Manner, if there be ſufficient Matter for the Prohibition; a Conſultation ſhall not be granted, but a *Superſedeas*.

The Party in his Plea to the Declaration in Prohibition varied from the Libel, on which a Conſultation was awarded. And if a Replication doth not purſue the Preſcription, &c. laid in the Declaration, tho' the Plea be bad, a Conſultation ſhall be granted. The Omiſſion of the Jury's finding Proceedings by the Defendant *contra Prohibitionem*, tho' it is Part of the Iſſue, hath been adjudg'd not Material, ſo as to hurt the Verdict: But after Judgment, on a Writ of Inquiry, upon an Attachment in Prohibition, the Judgment may be reverſed, if no Place is alledged where the Writ was delivered. In Judgment by Default, on a Declaration in Prohibition, after Attachment Damages are taxed, &c.

A Prohibition *to the Court of Admiralty.*

Pleas before our Sovereign Lord the King at Weſtminſter *of the Term of* Eaſter, *in the Year of the Reign*, &c.

BE it Remembered, that on *Wedneſday* next after fifteen Days from the Feaſt of *Eaſter*, this ſame Term, comes before our Sovereign Lord the King at *Weſtminſter* C. D. in his proper Perſon, and gives this Court here to underſtand and be informed; That whereas by a Statute

made in the Parliament of *Richard* the Second late King of *England*, held at *Weſtminſter* in the County of *Middleſex*, in the Thirteenth Year of his Reign, among other Things it was enacted and ordained by the Authority of the ſame Parliament, that the Admirals and their Deputies from thence for ever after ſhould in no wiſe have Cogniſance of any Suit for any Matter or Thing, unleſs the ſame ſhould be done upon the High Seas, as had been duly obſerved and uſed in the Time of the then late Sovereign Lord *Edward*, Grandfather of his ſaid late Majeſty *Richard* the Second, as in the ſame Statute (among other Things) it is contained: And whereas alſo by another Statute made in the Parliament of the ſaid King *Richard* the Second, in the Fifteenth Year of his Reign, held at *Weſtminſter* aforeſaid, in the County aforeſaid, amongſt other Things it is declared, ordained and eſtabliſhed, that the Court of Admiralty ſhould have no Cogniſance, Power or Juriſdiction of any Contracts, Pleas or Plaints, of or concerning any Thing done or ariſing within the Body of any County, whether by Land or Water, and alſo for or concerning the Wreck of the Sea; but that all ſuch Contracts, Plaints and Pleas, and all other Matters ariſing within the Body of any County, whether by Land or Water, as aforeſaid, ſhould be determined, tried, diſcuſs'd and regulated by the Law of the Land, and not before any Admiral or Admirals, nor before any of his or their Deputy or Deputies in any Manner howſoever, as in the ſame Statute (among other Things) doth plainly appear; And whereas alſo by an Act made in the Parliament held at *Weſtminſter* in the Second

Year,

Year of the Reign of our Sovereign Lord *Henry* the Fourth late King of *England*, amongſt other Things, it is ordained and enacted, that the aforeſaid Statute of the late King *Richard* ſhould be kept and obſerved, and that due Execution ſhould be thereof required, as in the ſaid Statute (among other Things) it is contained: And whereas all and all Manner of Pleas and Matters touching and concerning the Validity, Explanation, Interpretation, Conſtruction or Expoſition of any Statute made in whatſoever Parliament of our Sovereign Lord the King or his Progenitors, late Kings and Queens of *England*, and all Manner of Pleas, and Cogniſance of Pleas, for any Treſpaſſes, Contracts and Treſpaſſes upon the Caſe, for the taking, detaining or converting any Goods or Chattels, or for any other Cauſe whatſoever, whether by Land or Water, happening, ariſing or iſſuing within the Body of any County within this Kingdom of *England*, or any where on Shore; have and do ſpecially belong and appertain to our Sovereign Lord the King and his Royal Prerogative, and by the Laws and Statutes of this Kingdom of *Great Britain* ought, and always from Times paſt hitherto have been accuſtomed to be tried, determined and diſcuſſed in ſome of the King's Temporal Courts of Record before the King himſelf, or before his Temporal Juſtices or Judges, and not in any Manner howſoever before the Lord High Admiral of *England*, or before any Perſon or Perſons holding the Office of High Admiral, his or their Deputy or Deputies whatſoever. Nevertheleſs certain Perſons, that is to ſay, *E. F.* and *G. H.* not being ignorant of, or unacquainted with the Premiſſes, but contriving unjuſtly

unjuſtly to trouble, grieve, vex and oppreſs the ſaid *C. D.* contrary to the due Courſe of the Law of this Kingdom, and to the Form of the Statutes aforeſaid, have unjuſtly drawn the Cognizance of a Plea that belongeth and appertaineth to our Sovereign Lord the King and his Royal Prerogative, to another Manner of Trial, before the Worſhipful Sir *H. P.* Knt. Doctor of Laws, Supreme Judge of the Court of Admiralty, his Deputy or Surrogate, or ſome other competent Judge in that Behalf, by Virtue of a certain Proceſs iſſuing out of the ſaid Court of Admiralty, for proſecuting the ſaid *C. D.* Owner of a Ship called, *&c.* with its Tackle and Furniture, of which *J. K.* late was, but, *&c.* now is Maſter, for and concerning the Sale and Delivery of divers Wares and Merchandizes, ſold and delivered to and for the Uſe of the ſaid Ship, and for and concerning Work and Labour done by the ſaid *E. F.* and *G. H.* to and for the Uſe of the ſaid Ship, out of the Juriſdiction of that Court, by craftily and ſubtilly libelling and ſuggeſting againſt the ſaid Ship and the ſaid *C. D.* in the ſame Court of Admiralty, amongſt other Things, as followeth, that is to ſay, *Imprimis*, That in the Month of *January*, in the Year of our Lord One Thouſand ſeven Hundred and Thirty-two, and for ſeveral Months before and after, the ſaid *J. K.* was the Maſter of the ſaid Ship the, *&c.* and had the Care and Government of her as Maſter, and was put in and appointed Maſter of her by the Owner, who was then an Inhabitant of, *&c.* but is ſince dead, and ſo much the ſaid *C. D.* hath confeſſed and declared; and this was and is true, publick and notorious, and he propoundeth jointly and ſeverally for every Thing, *&c.* (here go on with the Libel) alſo

that all and ſingular the Premiſſes were and are true and notorious, as by a true Copy of the ſaid Libel had, read and heard here in this Honourable Court, amongſt other Things, more plainly may appear; whereas in Truth the ſaid Wares and Merchandizes ſold and delivered as aforeſaid, and the ſaid Work and Labour done and performed as aforeſaid for the ſaid Ship, were ſold and delivered, done and performed in the River of *Thames*, that is to ſay, in the Pariſh of *S.* in the County of *M.* and not upon the High Seas, nor within the Juriſdiction of the ſaid Court of Admiralty, as by the aforeſaid Libel above is ſuppoſed; to all which Matters and Things the ſaid *E. F.* and *G. H.* unjuſtly compelled the ſaid *C. D.* to appear in the ſaid Court of Admiralty before the ſaid Judge, to make anſwer to the ſaid *E. F.* and *G. H.* of and concerning the Premiſſes: And altho' the ſaid *C. D.* in the ſaid Court of Admiralty, before the Judge of the ſaid Court, pleaded and alledged, and offered to prove, with undeniable Teſtimony, in his Diſcharge, all and ſingular the Premiſſes to be true; yet the ſame Judge of that Court altogether did, and ſtill doth refuſe to admit ſuch Plea, Allegation and Proof, and the aforeſaid *E. F.* and *G. H.* are daily contriving to compel the ſaid *C.* to make Anſwer of and concerning the Premiſſes, and with all their Might endeavour to cauſe the ſaid *C.* to be condemned therein, by a definitive Sentence and Decree of the ſaid Court of Admiralty, in Contempt of our Sovereign Lord the King, and to the diſinheriting him of his Crown and Dignity, and to the manifeſt Damage, Impoveriſhment and Grievance of the ſaid *C.* and againſt the Laws

and Cuſtoms of this Kingdom, and alſo contrary to the Form and Effect of ſeveral Statutes in that Caſe made and provided. Wherefore the ſaid C. humbly imploring the Aid and Aſſiſtance of this honourable Court before the King himſelf, prayeth to be relieved, and that he may have his Majeſty's Writ of Prohibition, to be directed to the ſaid Judge of the ſaid Court of Admiralty, or to any other Judge proper for that Purpoſe, to prohibit him or them from taking any further Cogniſance of the ſaid Plea before him or them, touching or concerning the Premiſſes; and it is granted to him accordingly, &c.

A Suggeſtion for a Prohibition *to the Spiritual Court, on a* Modus *for Tithes.*

Trinity Term, *the Sixth of King* George II.

BE it remembered, that on *Friday* next after the Morrow of the *Holy Trinity*, this ſame Term, before our Sovereign Lord the King at *Weſtminſter* cometh *C. D.* of the Pariſh of *M.* in the County of *S. Gent.* in his proper Perſon, and giveth this Court to underſtand and be informed, That whereas all and all manner of Pleas and Buſineſſes of and concerning Preſcriptions and Cuſtoms of this Kingdom of *England* and the Cogniſance of the ſame, belong and appertain to our Sovereign Lord the King, his Crown and Dignity, and ought and always hitherto have been accuſtomed to be tried and diſcuſſed in the Courts of Record of our ſaid Lord the King, and not in any Eccleſiaſtical Court: And whereas within the Pariſh of *M.* aforeſ-

that

aforesaid in the said County of *S.* and the Borders, Limits and Tithable Places of the same, there hath been Time out of Mind, and now is a Custom and Mode of Tithing, that all and every Proprietor of any Lands, Meadows or Pastures within the said Parish of *M.* their Farmers or Occupiers, have been used and accustomed to pay Yearly to the Rector of the Rectory and Parish Church of *M.* aforesaid, for the Time being, or to his Farmer thereof, for every Milch Cow had, kept and depastured within the Parish of *M.* aforesaid, one Penny, and for every Calf, to the Number of Seven, generated and nourished within the Parish aforesaid, one Halfpenny, in Lieu and in full Payment, Satisfaction and Discharge of all Tithes of the Herbage of such Cows, and of Milk, Butter, Cheese and such Victuals, in what Manner soever happening, growing, renewing or increasing from the aforesaid Cows; which said several Sums of Money so payable and paid, all and singular the Rectors of the aforesaid Church for the Time being, or their Farmers thereof, for all the Time aforesaid, have Yearly accepted, received and had of every Occupier in full Lieu and satisfaction of all and singular the aforesaid Tithes happening, renewing and growing. And whereas the said *C. D.* now doth, and for five Years last past hath held, occupied and enjoyed certain Parcels of Land, Meadow and Pasture called, *&c.* within the Parish of *M.* aforesaid; and during that Time the said *C.* hath kept and depastured in and upon the same Parcels of Land, Meadow and Pasture, Four Milch'd Cows, of which said Four Cows, Four Calves have been Yearly generated and nourish'd within the Parish

riſh aforeſaid: Nevertheleſs one *A. B.* being Rector of the Rectory and Pariſh Church of *M.* aforeſaid, well knowing the Premiſſes, contrary to the due Form of the Law of this Kingdom, and contrary to the Cuſtom aforeſaid, in order to grieve and oppreſs the ſaid *C. D.* and to draw the Cogniſance of a Plea which belongeth to the Courts of our Sovereign Lord the King to a different Trial in a Court Chriſtian, hath craftily and ſubtilly impleaded the ſaid *C.* in the Court Chriſtian before the Worſhipful and Excellent, *&c.* Doctor of Laws, principal Official of the Conſiſtory Court of the Biſhop of *Bath* and *Wells*, or his Surrogate, by libelling againſt the ſame *C.* in the ſaid Court Chriſtian, (amongſt other Things) that from an ancient and laudable Cuſtom uſed, approved of and obſerved within the Pariſh of *M.* aforeſaid, and the Borders, Limits and Tithable Places thereof, every Foreigner dwelling out of the Pariſh of *M.* aforeſaid, and occupying any Lands lying and being within the ſaid Pariſh, depaſturing Land with Beaſts and Cattle, hath been accuſtomed, and of Right ought, and is obliged to pay to the Rector of the Rectory of the Pariſh Church of *M.* aforeſaid for the Time being, his Farmer or Collector of Tithes, according to the Annual Value or Rent of the ſaid Land, lying or being within the ſaid Pariſh of *M.* the Sum of Two Shillings of good and lawful Money of *England*, for every Pound Sterling as the ſaid Lands are Yearly worth, for and in Conſideration and Lieu of the Tithes of the Herbage, *&c.* of the ſaid Land, and of the Paſturing the Beaſts and Cattle in and upon the ſame; and that in the Months of, *&c.* in the Year of our Lord,

Lord, &c. the aforesaid, *C. D.* was a Foreigner, and dwelt out of the Parish of *M.* aforesaid, that is to say, in the Parish of *P.* in the County of *S.* aforesaid, and occupied Lands within the Parish of *M.* aforesaid, the Borders, Limits and Tithable Places thereof, of the Yearly Value or Rent of Six Pounds, which he depastured and fed with Beasts and Cattle during all that Time, or a great Part thereof; and on that Occasion unjustly compell'd and constrained the said *C.* to appear before the said Spiritual Judge, and to answer to the said *A. B.* of and concerningthe Premisses; Whereas in Truth the said *C.* in the Months aforesaid never kept, fed or had any Beasts or Cattle within the Parish of *M.* aforesaid, or upon the said Parcels of Land, Meadow and Pasture called, &c. or in any other Place within the said Parish of *M.* except the Four milch'd Cows before mentioned, and Four Calves Yearly, during the Time aforesaid generated and nourished from the same Cows; and altho' the same *C. D.* always was ready at *M.* aforesaid, and offered to pay to the said *A. B.* Yearly, and every Year of the said Years, Four Pence for the aforesaid four Cows depastured within the said Parish, and Two Pence for the Two Calves Yearly generated and nourished from the said Cows, according to the Form of the Custom and Mode of Tithing aforesaid: And also altho' the said *C.* hath pleaded all and singular the Premisses contained in this Suggestion, and offered to prove the same in his Discharge in the said Court Christian by undeniable Testimony to be true; nevertheless the said Spiritual Judge altogether refused to admit or receive the said Plea, Allegation and Proof afore-

aforesaid, and with all his Might endeavours and daily contrives to compel the said *C. D.* to pay the said Money specified in the said Libel, in Contempt of our Sovereign Lord the King, and to the Damage, Prejudice and manifest Oppression of the said *C.* and contrary to the due Form of the Law of this Kingdom, and the Prescriptions and Customs aforesaid; and this he is ready to verify. Wherefore the said *C.* humbly imploring the Aid and Assistance of this honourable Court, prayeth Relief and his Majesty's Writ of Prohibition directed to the said Spiritual Judge, or to any other Judge whatsoever competent in that Behalf, to prohibit him that he shall not any further hold Plea before him, touching or concerning the said Premisses in any manner howsoever, and that he shall not presume to attempt any thing further therein; and if by Reason of the Premisses, he hath thunder'd out his Sentence of Excommunication against the said *C. D.* then that he altogether, under a Penalty incident thereto, absolve the said *C.* or cause the said Sentence to be revoked and annulled: And it is granted to him accordingly.

An Attachment *upon a Writ of* Prohibition.

Hill. 7 *Geo.* II. *B. R.*

SOmerset, (to wit) *A. B.* who sueth in this Case as well for our Sovereign Lord the King as for himself, complaineth of *C. D.* Clerk, Rector of the Parish Church of *T.* in the County of *S.* aforesaid, in the Custody of the Marshal of the *Marshalsea* of our Sovereign Lord the King, being

ing before the King himſelf, of a Plea, wherefore he is ſtill proſecuting a Suit in the Court Chriſtian, contrary to a Royal Prohibition to him before directed and delivered forbidding the ſame, for this Cauſe (that is to ſay) That whereas the Pariſh of *T.* in the County aforeſaid, is an ancient Pariſh; and whereas the ſaid *A.* by the Space of Seven Years laſt paſt and upwards, hath been and now is an Inhabitant within the Pariſh aforeſaid, and during all that Time held and occupied Sixty Acres of Meadow and Paſture, with their Appurtenances, being Parcel of the Manor of *&c.* in the ſaid County of *S.* within the Pariſh aforeſaid, and the Borders, Limits, and Tithable Places thereof; And whereas alſo within the ſame Pariſh, the Borders, Limits and Tithable Places thereof, there are, and Time out of Mind have been ſuch Cuſtoms and Modes of Tithing, of and concerning the Tithes of Lambs falling, yean'd and increaſing within the Pariſh aforeſaid, *&c.* and of and concerning the Tithes of milch'd Cows and Heifers kept and depaſtured within the Pariſh aforeſaid, the Borders, Limits and Tithable Places thereof, and of and concerning the Tithe of Calves falling, brought forth and increaſing, within the Pariſh aforeſaid, *&c.* and of and concerning the Tithes of Colts, falling, brought forth and foled within the Pariſh aforeſaid, and the Borders, *&c.* and of and concerning the Tithes of Hay growing, renewing and increaſing within the ſaid Pariſh, the Borders, Limits and Tithable Places thereof, and of and concerning the Tithes of Gardens and Orchards being within the ſaid Pariſh, the Borders, Limits and Tithable Places thereof, and of and concerning the Payment of Offerings of all

Men and Women inhabiting within the ſaid Pariſh, the Borders, Limits and Tithable Places thereof, that is to ſay; That every Occupier of any Lands or Tenements within the ſaid Pariſh, and the Borders, &c. who in any Year kept any milch'd Cows or Heifers, within the Pariſh aforeſaid, hath paid, and during all the Time aforeſaid had been uſed and accuſtomed to pay to the Rector of the Pariſh Church of T. aforeſaid, &c. for every ſuch milch'd Cow, &c. (ſetting forth the particular *Modus* of Tithing all the foregoing Things): And whereas the Hundred of &c. within the ſaid County of S. is, and Time out of Mind hath been an ancient Hundred, within which ſaid Hundred the Pariſh of T. now is, and Time out of Mind hath been; And whereas within the ſame Hundred there now is, and Time out of Mind hath been, an ancient Cuſtom, during all that Time, uſed and approved of, that all the Inhabitants within the ſaid Hundred, occupying any Lands, Meadow or Paſture within the ſaid Hundred, ſhould be free, exempt and diſcharged of and from the Payment of any Tithes of or for the depaſturing of any Cattle not milch'd, or uſed in the Plough, by them depaſtured in any Lands, Meadows or Paſtures being within the Hundred of, &c. aforeſaid; And whereas the aforeſaid *A. B.* for the Space of Nine Years next before the Exhibiting of the Bill of the ſaid *A.* in this Court, was and now is an Inhabitant within the Hundred aforeſaid, and within the ſaid Pariſh of T. and during the ſaid Nine Years did poſſeſs and occupy divers Lands, Meadow and Paſture, within the Hundred and Pariſh aforeſaid, and depaſtured upon the ſame Lands, Meadow and Paſture,

Paſture, within the Hundred and Pariſh aforeſaid, and not elſewhere, within that Time, divers Cattle not employ'd to Plough or Pail, that is to ſay, Cows, Heifers and Colts: Nevertheleſs the aforeſaid *C. D.* not being ignorant of the Premiſſes, but contriving and maliciouſly intending unjuſtly to trouble, grieve, oppreſs and vex the ſaid *A.* contrary to due Form of Law, and contrary to the Form and Effect of the ſaid Modes of Tithing, and the Cuſtom aforeſaid, and unjuſtly to violate the Cuſtoms and Preſcriptions of the Manner of Tithing, and alſo to diſinherit our Sovereign Lord the King of his Crown and Dignity, and to draw the Cogniſance of a Plea which belongeth and appertaineth to our ſaid Sovereign Lord the King, his Crown and Dignity, to a different Trial, hath impleaded with the ſaid *A. B.* in the Court Chriſtian, before the worſhipful *R. H.* Doctor of Laws, Surrogate (lawfully conſtituted) to *&c.* Archdeacon of the Archdeaconry of *Wells*, his lawful Deputy, or ſome other Judge competent in that Behalf, of and for Subſtracting and Non-payment of Tithes of Lambs fallen, yeaned and brought forth within the Pariſh aforeſaid, and the Borders, Limits and Tithable Places thereof, in the Years of our Lord, *&c.* and alſo in the Months of, *&c.* and every of the ſaid Months and Years, or ſome of them, and for Subſtracting and Non-payment of Tithes of Calves fallen, calved and brought forth within the Pariſh aforeſaid, the Borders, Limits and Tithable Places thereof, *&c.* (ſo on, charging all the ſeveral Particulars) and poſſeſſed by the ſaid *A. B. &c.* by craftily and ſubtilly libelling in the

ſame Court Chriſtian againſt the ſaid *A. B.* in and by a certain Libel and Schedule to the ſame ſubſcribed or annexed, exhibited in the ſaid Court Chriſtian againſt the ſaid *A.* in manner following, that is to ſay, *Imprimis, &c.* (reciting the Libel) as by the Copy of the ſaid Libel and Schedule brought and read in this Court, among other Things, more fully may appear; and the ſaid *C. D.* compelled the ſaid *A. B.* to appear in the ſaid Court Chriſtian before the ſaid Spiritual Judge by Occaſion of the Premiſſes, and to make anſwer to the ſaid *C. D.* therein: And altho' the ſaid *A. B.* every Year of the aforeſaid Years, in which the ſaid *A.* had any Lambs, Calves, Colts, milch'd Cows or Heifers, or any Hay, Gardens or Orchards within the ſaid Pariſh, the Borders, Limits or Tithable Places thereof, increaſing, renewing or growing, or that he dwelt within the ſaid Pariſh, offered and was and now is ready to pay to the ſaid *C. D.* the ſaid ſeveral Sums of Money for the Tithes of Lambs, Calves, Colts, Milched Cows, *&c.* according to the Form and Effect of the ſaid ſeveral Modes of Tithing; And altho' the ſame *A.* pleaded and alledged in his Diſcharge, and often offered to prove all and ſingular the Premiſſes, with undeniable Teſtimony, to be true, in the ſaid Court Chriſtian, before the ſaid Spiritual Judge; yet the ſaid Judge altogether refuſed to receive or admit the ſaid Plea, Allegation and Proof, and the aforeſaid *R. H.* with all his Might is endeavouring and daily contriving to condemn the ſaid *A.* by a definitive Sentence of the ſaid Court Chriſtian, for and concerning the Premiſſes contain'd in the ſaid Libel and Schedule, and to compel him to pay the Tithes demanded in Form aforeſaid,

ſaid, in Contempt of our Sovereign Lord the King, his Crown and Dignity, and to the great and manifeſt Damage of the ſaid *A.* &c. and contrary to the due Form of the Law of this Kingdom, and the Preſcriptions, Cuſtoms, and Modes of Tithing aforeſaid: And altho' the ſaid *A. B.* the Day of, &c. in the Year of the Reign &c. at *T.* aforeſaid, in the County aforeſaid, delivered to the ſaid *C. D.* his Majeſty's Writ of Prohibition, &c. nevertheleſs the ſame *C. D.* deſiſted not from proſecuting the ſaid *A. B.* but further proſecuted the ſaid *A.* notwithſtanding the ſaid Writ of Prohibition, in Contempt of our Sovereign Lord the King, and contrary to the Prohibition aforeſaid; wherefore the ſaid *A.* as well for our Sovereign Lord the King, as for himſelf, ſaith he is rendered worſe in his Circumſtances, and hath ſuſtained Damage to the Value of 200 *l.* and therefore as well for our Sovereign Lord the King, as for himſelf, he brings this Suit, &c.

A Declaration in Prohibition, *Plea and Iſſue.*

Wilts, ſſ. BE it remember'd, that lately, to wit, in *Michaelmas* Term laſt paſt, before our Sovereign Lord the King at *Weſtminſter* came *C. D.* Gent. who in this Caſe ſueth as well for our Sovereign Lord the King, as for himſelf, by *G. F.* his Attorney, and then brought his Bill in this Court againſt *A. C.* in Cuſtody of the Marſhal, &c. of a Plea of Treſpaſs and Contempt againſt thoſe who proſecute their Suits in a Court Chriſtian, after his Majeſty's Prohi-

bition to them directed and delivered to the contrary thereof, and there are Pledges of profecuting, to wit, *John Doe* and *Richard Roe*; which ſaid Bill followeth in theſe Words, (that is to ſay) *Wilts* (to wit) *C. D.* Gent. who ſueth in this Caſe as well for our Sovereign Lord the King, as for himſelf, complaineth of *A. B.* Gent. in Cuſtody of the Marſhal of the Marſhalſea of our ſaid Sovereign Lord the King, before the King himſelf, of a Plea of Treſpaſs and Contempt againſt thoſe who proſecute their Pleas in a Court Chriſtian after his Majeſty's Royal Prohibition to them directed and delivered to the contrary thereof, for this Cauſe (that is to ſay) whereas according to the Laws and Cuſtoms of this Kingdom of *England* all manner of Pleas and Cogniſance thereof happening or ariſing upon any Debt, Contract, or Treſpaſs upon the Caſe for Expences or Fees within this Kingdom, and of any Pleas, or Cogniſance of Pleas thereon eſpecially belong and appertain to our Sovereign Lord the King, and his Royal Crown, and ought and always have been uſed and accuſtomed to be tried, determined or diſcuſſed by the Common Law of the Kingdom, and not in any Court Chriſtian by the Eccleſiaſtical Laws or Cenſures there uſed: And alſo whereas by a certain Act of Parliament, *&c.* Nevertheleſs the ſaid *A. B.* not being ignorant of the Premiſſes, but wickedly contriving to oppreſs the ſaid *C. D.* contrary to the due Form of the Laws of this Kingdom, to the diſinheriting his ſaid Majeſty, and to draw the Cogniſance of a Plea, which belongeth to the King's Courts of Law, from thence to a different Trial in a Court Chriſtian, the Day of, *&c.* in the Year of the Reign, *&c.* (here

ſetting forth the Grievance and Particulars of the Libel) And altho' it manifeſtly appear'd to the Spiritual Judge, that the ſaid *C. D.* was within the Age of Twenty-One Years when the ſaid Suit was proſecuted againſt, *&c.* by the ſaid *A. B.* and alſo altho' the ſaid *C. D.* in the ſaid Court Chriſtian before the ſaid Spiritual Judge in his Diſcharge, and to be diſmiſſed from thence in the Premiſſes, pleaded, alledged and offered with unconteſtable Teſtimony to prove the Truth of all and ſingular the Premiſſes, by the ſaid *C. D.* above ſuggeſted and alledged: Yet the ſame Spiritual Judge altogether refuſed to admit ſuch Plea, Allegation and Proof; and the ſaid *A. B.* as much as in him lies, is daily contriving to compel the ſaid *C. D.* by the definitive Sentence of the ſaid Court Chriſtian to condemn the ſaid *C. D.* to pay to the ſaid *A. B.* all and ſingular the Fees and Expences in the ſaid Schedule or Libel annexed mentioned, to the Contempt of the ſaid Lord the King, and to the great Damage, Prejudice and Grievance of the ſaid *C. D.* and againſt the Form of the Statute aforeſaid. And altho' his ſaid Majeſty's Writ of Prohibition in Contradiction thereto, was directed and delivered to the ſaid *A. B.* in this Cauſe, on the Day of, *&c.* in the Year of the Reign, *&c.* at *S.* in the County aforeſaid; nevertheleſs the ſaid *A. B.* afterwards, that is to ſay, the Day of, *&c.* in the Year aboveſaid, at *S.* aforeſaid, in the ſaid County of *W.* notwithſtanding his Majeſty's ſaid Writ of Prohibition directed and before delivered to him to the contrary in Form aforeſaid, continued to proceed and proſecute his ſaid Plea, in Contempt of our Sovereign Lord the King, and to

the manifeſt Damage, Prejudice, Impoveriſhment and Grievance of him the ſaid *C. D.* wherefore he ſaith he is rendered worſe in his Circumſtances, and hath ſuſtained Damage to the Value of Thirty Pounds; and therefore in this Caſe as well for our Sovereign Lord the King, as for himſelf, he hath brought his Suit, *&c.*

And now at this Day, to wit, *Tueſday* next after, *&c.* the ſame Term, 'till which Day the ſaid *A. B.* had Leave to Imparle to the ſaid Bill, and then to anſwer, *&c.* came before our ſaid Sovereign Lord the King at *Weſtminſter* as well the ſaid *C. D.* by his Attorney aforeſaid, as the ſaid *A. B.* by *W. J.* his Attorney; and the ſaid *A.* defends himſelf againſt the Force and Injury, Contempt and Damages, and whatever elſe he ought to defend, when this Court will pleaſe to take the ſame into Conſideration, and ſaith, that he did not proſecute his Plea in the ſaid Court Chriſtian after a Royal Prohibition to the contrary, directed and delivered to him, as the ſaid *C.* who as well, *&c.* in Manner and Form aforeſaid, hath above complained againſt him; and of this he puts himſelf upon his Country; and the ſaid *C.* who as well, *&c.* likewiſe doth the ſame.

If the Defendant pleads a *Special Plea*, praying Judgment and his Majeſty's Writ of *Conſultation*, then the Plaintiff may *Demur*, and the Defendant join, *&c.* thus:

And the ſaid *C. D.* who in this Caſe ſues as well for our Sovereign Lord the King, as for himſelf, ſaith, That for any Thing above in Pleading alledged by the ſaid *A.* his ſaid Maieſty's

fty's Writ of Conſultation ought not to be granted in this Caſe to the ſaid *A. B.* becauſe by proteſting that the ſaid *A. &c.* as he in Pleading hath above alledged; and alſo in proteſting that the Civil or Canon Law doth not affirm the ſaid *A.*'s holding the ſaid Plea in the Pleading of the ſaid *A.* mentioned to be lawful or tolerable: Nevertheleſs, for his Defence the ſaid *C. D.* ſaith, that the Plea made by the ſaid *A. B.* as to, *&c.* and to anſwer to the ſaid *A.* in the ſaid Cauſe for with-holding of Fees, and which was not determined in Manner and Form above pleaded, and the Matters in the ſame contained, are not ſufficient in Law for the ſaid *A.* to have his ſaid Majeſty's Writ of Conſultation iſſue in this Cauſe, to which the ſaid *A.* need not, nor by the Laws of the Land is he any wiſe obliged to make Reply; and this he is ready to verify: Wherefore for Want of a ſufficient Plea in this Cauſe, the ſaid *C. D.* prayeth Judgment, and his ſaid Damages to be adjudged to him, for the Reaſons aforeſaid, *&c.*

And the ſaid *A. B.* ſaith, That the ſaid Plea by the ſaid *A.* as to, *&c.* and to anſwer to the ſaid *A.* in the ſaid Cauſe, for with-holding and Non-payment of the ſaid Fees, and which was determined in that Cauſe in the ſaid Court of, *&c.* was determined in Manner and Form above pleaded, and the Matters in the ſame contained are good and ſufficient in Law for the ſaid *A.* to have his ſaid Majeſty's Writ of Conſultation in this Cauſe to iſſue; which ſaid Plea, and the Matters therein contained, the ſaid *A.* is ready to verify and prove, as the Court ſhall pleaſe to direct; and becauſe the ſaid *C. D.* doth not anſwer to the ſaid Plea, nor hath in any wiſe denied

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nied the ſame, the ſaid *A.* as before, prayeth Judgment, and his ſaid Majeſty's Writ of Conſultation to be granted to him in this Cauſe, *&c.*

And becauſe the Court of our ſaid Lord the King now here have not yet thoroughly conſidered of their Judgment to be given of and concerning the Premiſſes; therefore a Day is given to the ſaid Parties before our Sovereign Lord the King at *Weſtminſter* until the Day, *&c.* next after (the Day of the Return) for the Hearing of their Judgment to be given of and upon the Premiſſes; for that the ſaid Court of our ſaid Sovereign Lord the King here are not yet, *&c.*

Of Proceedings againſt Privileged Perſons, Attornies, Members of Parliament, &c.

Privilege is where ſome Benefit or Advantage is granted or allowed to any Perſons contrary to the Courſe of the Law; or whereby a private Perſon or Corporation is exempted from the Rigour of the Common Law.

And it is therefore Perſonal or Real; Perſonal Privilege, as of Members of Parliament, and of Convocation, and their Menial Servants, not to be arreſted in the Time of Parliament or Convocation, nor for certain Days before or after; Peers, Ambaſſadors and their Servants, *&c.* Real Privilege, is that which is granted to a Place, as to the King's Palaces, the Courts at *Weſtminſter*, the Univerſities, *&c.* that their Members or Officers muſt be ſued within their Precincts or Courts, and not in other Court. Alſo the Counties Palatine, Cinque Ports, many Cities

ties and Towns, &c. have Privilege as to Pleas, that none shall be compelled to appear or Answer out of their Jurisdictions. 4 *Inst.* 212. 2 *Roll. Abr.* 272. *Finch* 321.

The Person of a Peer, as well out of as in Parliament Time, is privileged from all Arrests, unless it be in criminal Cases: Peers of the Realm are not to be arrested upon mesne Process, or on Execution for Debt or Trespass; because they are supposed not only to attend the King and the Publick Affairs, but the Law doth presume they have sufficient Lands in which they may be distrained: And therefore altho' a Peer may not be arrested in his Body, yet his Estate may be sequestred for Debt, &c. when he refuses to appear and answer; in which Case of Non-appearance, &c. the Coaches of several Peers have out of the Time of Privilege been distrained, and Cattle seized upon their Lands, to compel them to appear. 6 *Rep.* 52, 53. *Stat.* 12 *W.* 3.

It is said that the Commons in Parliament claim Privilege for Forty Days before and after each Session and Prorogation: Though the Statute 12 *W.* 3. *c.* 3. ordains, that Actions may be prosecuted in any of the Courts at *Westminster* against Persons entitled to Privilege of Parliament, after any Dissolution or Prorogation, until a new Parliament is called, or the same is reassembled; and after an Adjournment for Fourteen Days and above, and the respective Courts may proceed to Judgment, &c. the Proceedings are to be by Summons and Distress infinite, until the Parties enter a common Appearance; and the Real and Personal Estates of the Defendants shall be sequestred on Default of

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Appearing; but the Plaintiff may not arreſt their Bodies. And where any Plaintiff is ſtayed or prevented from Proceeding by Privilege of Parliament, he ſhall not be barred by any Statute of Limitation, or be nonſuited, diſmiſſed, or his Suit diſcontinued for Want of Proſecution; but at the Riſing of the Parliament, ſhall be at Liberty to proceed to Judgment and Execution. See 2. *Lev.* 72. 1. *Brownl.* 81.

Privileges are of Parliament, of Courts, and their Officers and Suitors, and of Attornies, *&c.* And Privilege is either of Court, or of Proceſs; tho' none ſhall be allowed the Privilege of Proceſs, but thoſe who are the Officers of the Court, and ſuppoſed to be attending therein. In the Court of *C. B.* there are two Kinds of Privileges, the one is of the Officers, to be ſued there only by Bill; and the other of the Clerks, *&c.* to be proſecuted there by Original: And in the Court of *Exchequer*, there are three Sorts of Perſons who are privileged, *i. e.* Debtors to the King, Accountants, and Officers; againſt the firſt of theſe Perſons, any Man who has a Privilege in another Court, as an Officer or Attorney thereof, ſhall have his Privilege; for the Privilege of a Perſon as Debtor, is but a general Privilege: But if an Accountant begins his Suit here, he hath in ſuch Caſe a Special Privilege, and no other ſhall be allow'd againſt him, becauſe of his Attendance to paſs his Account, in which the King hath a particular Concern; and it is the ſame in an Officer of the Court who commences an Action here, no Privilege ſhall prevail againſt him. 2 *Lill. Pract. Reg.* 368. *Hardr.* 367. 3 *Salk.* 283.

If

If a privileged Person in one Court do sue a privileged Person in another, in a Civil Action, the Person sued shall not have his Privilege: It has been also adjudg'd, that where Proceedings are merely at the Suit of the King, as upon Indictments, or Informations brought by the Attorney General, Privilege shall not be allowed; but where the Proceedings are at the Suit of the King and the Party, as in the Case of a common Informer, *&c.* there the Defendant may have Privilege. Where an Attorney is sued as Executor or Administrator, Privilege will not be granted him; nor in a joint Action, with another not privileged; tho' if the Action may be severed, the Want of Privilege of one, shall not take away the Privilege of the other. Privilege is denied to a Man, when his Wife is joined in an Action with him: The Wife of an Attorney of *B. R.* if she be arrested, shall not have Privilege; but the Husband is to put in Bail for her. 2 *Leon.* 41. 1 *Lutw.* 193. 1 *Salk.* 2. 245. *Noy* 68.

A privileged Person shall not generally have his Privilege upon Motion; but he must Plead it: But there is no Necessity of Pleading the Privilege of the Exchequer; for it shall be granted upon producing the Red Book of the Exchequer by a Baron of that Court: And of later Times, the Party hath been admitted to Privilege upon Prayer to the Court. Attornies may plead Privilege *per Attornatum*; tho' not any Officer of a Court, who is presumed to be always present: Pleading wrong, Judgment shall be given to Answer over, *&c.* By some Opinions, Privilege may be allow'd, after Bail put in; and not after Imparlance: By others, that

the Privilege of an Attorney may not be pleaded after Bail given in, which allows the Juriſdiction, &c. 1 *Lutw.* 46. *Stile* 413. 3 *Lev.* 343. 1 *Salk.* 1.

Where the Privilege of any Attorney is pleaded with a Writ, the Defendant cannot be denied to be an Attorney; if it be without, he may, and then a *Certiorari* ſhall be awarded to certify whether he be an Attorney or not. Writs of Privilege are to be ſigned by the Clerk of the Warrants, to ſhew a Perſon is an Attorney of the Court, before they ſhall be allowed: And to ſave Arreſt upon Proceſs, Attornies are to deliver their Writs of Privilege to the Sheriff, and allow them with him; otherwiſe the Sheriff will not diſcharge an Attorney upon his Writ of Privilege, unleſs it be on Proceſs iſſuing out of an inferior Court, but he muſt Plead his Privilege *Sub pede Sigilli.* 2 *Salk.* 545. *Trin.* 9 *W.* 3.

By Cuſtom and Privilege Attornies and Clerks ſhall not be choſe into any Office, againſt their Wills, but ought to attend the Service of the Court to which they belong: Tho' it is ſaid an Attorney ſhall not be excuſed by Privilege from Offices which may be executed by Deputy; only thoſe which require Perſonal Duty, as that of Church-warden, Conſtable, &c. A Filazer's Clerk claimed to be privileged in *B. R.* but it was not allowed him; for tho' the Maſter may be privileged, the Court takes no Notice of the Servant, he having no neceſſary Dependance on the Court. It hath been held, that altho' an Attorney doth not Practice, he ſhall have Privilege ſo long as he continues an Attorney upon Record. *Cro. Car.* 8. *March* 30. 2 *Lill. Reg.* 374. *Lutw.* 1667.

An Attorney, or Filazer of the Common Pleas, if sued in *B. R.* may plead their Privilege: But this a Serjeant at Law may not do, because he may sign Pleas, be of Counsel, and Practice in other Courts in *Westminster*-Hall, and is not confined to Practice in *C. D.* tho' if it be in any inferior Court, he shall have his Privilege. A Barrister at Law, attending on the Court, ought to have Privilege to be sued in all transitory Actions in *Middlesex*; and so of an Attorney, *&c.* 2 *Lev.* 129. 1 *Mod.* 298. 2 *Lill.* 370.

One that hath a Suit depending in *B. R. &c.* is privileged from being arrested in coming to the Court from his House or Lodging, to follow his Cause, and also in going back again directly to his House or Lodging; and if he be arrested in so doing, the Court upon Motion made to inform them of it, will discharge the Party, and punish the Person making the Arrest; if he knew the other had a Suit depending here, and came hither to attend it. Action of Assault, *&c.* being brought in *C. B.* and the Parties at Issue, after the Trial, when the Jury went out to consider of their Verdict, the Defendant in this Action arrested the Plaintiff by Process out of *B. R.* for an Assault made before that Time on him; and this appearing to the Court, they ordered him to release the Party from the Arrest, and set a Fine upon him for the Contempt. *Mich.* 22 *Car. Goldsb.* 33.

Privilege of the Court was prayed to protect a Witness from being arrested, in coming to and going from the Court, and it was granted: And if any Man be arrested in *Westminster*-Hall *sedente Curia*, he may be discharged upon Motion,

if

if the Arreſt was on Meſne Proceſs; but not if he was taken in Execution, tho' even in that Caſe the Officer is puniſhable *per Curiam*. 2 *Lill. Reg.* 370. *Bulſt.* 85.

The Manner of ſuing a Member of Parliament in *B. R.* by original Bill, Proceſs of Summons, Diſtreſs Infinite, Attachment, *&c.* and of proceeding on leaving a Copy of the Bill with the Defendant, entitled to ſuch Privilege, or at his Houſe, Lodging, or laſt Place of Abode, purſuant to the Act 12 *W.* 3. is as follows:

A Bill *filed againſt a* Member of Parliament.

A. B. Complains of *C. D. &c.* the ſaid *C. D.* having Privilege of Parliament; for that, to wit, That whereas the ſaid *A.* the Day, *&c.* in the Year of the Reign of the Lord the now King, *&c.* at *Weſtminſter* accounted with the ſaid *C.* of and concerning divers Sums of Money, before that Time due and owing by the ſaid *C.* to the ſaid *A.* and then being in Arrear and unpaid; and upon that Account the ſaid *C.* was then and there found in Arrearage to the ſaid *A.* in Seventy-three Pounds and five Shillings, of lawful Money of *Great Britain*; and being ſo found in Arrearage, the ſaid *C.* afterwards, that is to ſay, the ſame Day of, *&c.* in the Year aforeſaid, at *Weſtminſter* aforeſaid, in Conſideration thereof did take upon himſelf, and to the ſaid *A.* did then and there faithfully promiſe, that he the ſaid *C.* would well and truly pay and content to the ſaid *A.* the aforeſaid

ſaid Seventy-three Pounds and five Shillings, when he ſhould be afterwards thereunto required. And alſo whereas afterwards, that is to ſay, the Day of, &c. in the Year, &c. at *Weſtminſter* aforeſaid, he the ſaid *C.* was indebted to the ſaid *A.* in Five Hundred Pounds of like lawful Money of *Great Britain*, for ſo much Money of the ſaid *A.* before that Time had and received by the ſaid *C.* to the Uſe of the ſaid *A.* And being ſo indebted, he the ſaid *C.* afterwards, that is to ſay, the ſame Day and Year laſt aboveſaid, at *W.* aforeſaid, in Conſideration thereof, did aſſume upon himſelf, and to the ſaid *A.* then and there faithfully promiſed, that he the ſaid *C.* would well and truly pay and ſatisfy the ſaid Five Hundred Pounds to the ſaid *A.* when he ſhould be thereto afterwards required. And alſo whereas afterwards, that is to ſay, on the ſame Day and Year, &c. laſt aboveſaid, at *W.* aforeſaid, he the ſaid *C.* was indebted to the ſaid *A.* in another Five Hundred Pounds, of like lawful Money, for ſo much Money before that Time at the Requeſt of the ſaid *C.* lent and accommodated by the ſaid *A.* unto the ſaid *C.* and he the ſaid *C.* being ſo indebted, did in Conſideration thereof, afterwards, that is to ſay, the ſame Day and Year, &c. aſſume upon himſelf, and to the ſaid *A.* &c. promiſed, that he would well and truly pay the ſaid Five Hundred Pounds laſt mentioned to the ſame *A.* when he ſhould be afterwards thereto required, &c. Nevertheleſs the ſaid *C.* not regarding his ſaid ſeveral Promiſes and Aſſumptions ſo made as aforeſaid, but contriving and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *A.* in

this Particular, hath not paid to the ſaid *A.* the ſaid ſeveral Sums of Money, or any Part thereof, nor in any Manner ſatisfied him for the ſame, altho' he the ſaid *C.* afterwards, that is to ſay, the ſaid Day and Year aforeſaid, *&c.* at *W.* aforeſaid, and often after, was requeſted by the ſaid *A.* to do it; but he hath hitherto wholly refuſed, and ſtill doth refuſe to pay the ſame to him, to the Damage of the ſaid *A.* One Thouſand Pounds; and therefore he brings his Suit, *&c.* And thereupon the ſame *A.* prays the Proceſs of the Lord the King to be thereof made according to the Form of the Statute in ſuch Caſe made and provided; and it is granted to him, *&c.*

The Writ of Summons thereon.

GEORGE the Second, *&c.* To the Sheriff of *M.* Greeting: We command you, that you ſummon *C. D.* (having Privilege of Parliament) that he be before us at *Weſtminſter*, on the Day, *&c.* next after, *&c.* to Anſwer to *A. B.* of a Plea of Treſpaſs upon the Caſe, as reaſonably ſhewn may be, that he ought thereof to Anſwer; and have you there this Writ. Witneſs *Philip* Lord *Hardwick* at *Weſtminſter*, the Day, *&c.* in the Eighth Year of our Reign.

Ventris.

A Distringas ad Respondend. against a Lord by Original.

GEORGE the Second, by the Grace of God, &c. To the Sheriff of *Middlesex*, Greeting: We command you, that you distrain *T.* Lord *D.* by all his Lands and Chattels in your Bailiwick, so as neither he, nor any one for him, lay Hands upon or meddle therewith, until you have another Precept from us; and that you for the Issues of the same Answer to us, so that he be before us on the Day, &c. wheresoever we shall then be in *England* to Answer to *A. B.* of a Plea; why whereas the said *T.* Lord *D.* on the Day and in the Year, &c. at *Westminster* in your County was indebted to the said *A. B.* in One Hundred and Fifty-one Pounds of lawful Money of *Great Britain*, for divers Goods and Merchandizes to the said Lord *D.* by the same *A.* at the Special Instance and Request of him the said Lord *D.* before that Time sold and delivered; and being so indebted, the said Lord *D.* in Consideration thereof, afterwards, that is to say, the same Day and Year, &c. did take upon himself and to the said *A.* then and there faithfully promise, that he the said Lord *D.* would well and truly pay and content to the said *A.* the aforesaid One Hundred and Fifty-one Pounds, when he should afterwards be thereunto required: And also whereas the said Lord *D.* afterwards, that is to say, on the Day, &c. in the said Year of the Reign, &c. at *W.* aforesaid, in Consideration that the said *A.* had at the like In-

ſtance and Requeſt of the ſaid Lord *D.* ſold and delivered to him the ſaid Lord *D.* divers other Goods and Merchandizes, the ſame Lord *D.* did thereon take upon himſelf, and to the ſaid *A.* did then and there faithfully promiſe, that he the ſaid Lord *D.* would likewiſe well and truly pay and ſatisfy to the ſaid *A.* when he ſhould be afterwards thereto required, ſuch Sum of Money as the ſaid Goods and Merchandizes were reaſonably worth; and the ſaid *A.* in Fact ſaith, that the Goods and Merchandizes laſt mentioned were reaſonably worth One Hundred and Fifty-one Pounds of like lawful Money of *Great Britain*, of which the ſaid Lord *D.* the ſame Day and Year aforeſaid, at *W.* aforeſaid, in the County aforeſaid, had Notice given: Nevertheleſs the ſaid Lord *D.* no wiſe regarding his ſeveral Promiſes and Undertakings aforeſaid, ſo made in Form aforeſaid, the aforeſaid ſeveral Sums of Money, or any Part thereof, to the ſaid *A.* hath not paid, nor in any Manner contented him for the ſame, altho' to do this, the ſaid Lord *D.* afterwards, that is to ſay, the Day, *&c.* in the Year aforeſaid, at *W.* aforeſaid, in the County aforeſaid, was requeſted by the ſaid *A.* but he hath hitherto altogether denied, and ſtill doth deny to pay the ſame to him, or in any wiſe to content him therefore; to the Damage of the ſaid *A.* One Hundred and Forty Pounds: And to hear his Judgment thereof, for his many Defaults; and have you then there this Writ. Witneſs *Philip* Lord *Hardwick* at *Weſtminſter*, &c.

Return

Return of Iſſues by the Sheriff.

The within named *Thomas* Lord *D.*

Manucaptors { *John Doe* and *Richard Roe.*

Iſſues 40 *s.*

So Anſwers J. B. *Knt. &c. Sheriff.*

To *ſue an Attorney* privileged, or any Officer of the Court of *B. R.* they are not to be arreſted; but you are to file a Declaration againſt the Party, and then deliver him a Copy thereof, and give Rules in order for his Plea; and the Declaration and Rules being delivered and ſerved in Time, he will be obliged to plead the ſame Term: And the like is to be obſerved if ſuch Attorney, *&c.* be Plaintiff, and the Declaration is delivered, and the Rules given in Time; for then the Defendant muſt Plead the ſame Term, and cannot imparl over to the next, tho' the Action be for Debt on Bond, and not for Fees; which ought to be remembred, to prevent Executions when not thought of.

But where an Attorney is Plaintiff in *B. R.* he cannot by his Privilege have Special Bail, where other Perſons can't have it; except it be for Fees, as a Miniſter of the Court, in which Caſe he may: Tho' in the Court of *C. B.* by the Uſage of that Court, on Attachment at the Suit of an Attorney Plaintiff, if the Debt be but 40 *s.* he may inſiſt upon Special Bail; and here if an Attorney is Defendant, it is not re-

quired that he ſhall give in Bail, he being at all Times preſent in Court, as the Law will preſume, and by giving in of Bail, it is ſaid he waves his Privilege.

Againſt Clerks of the Office, the proceeding is by filing a Bill of *Middleſex* in the Office, and delivering a Copy of it to the Defendant, with a Notice to Plead, *&c.* A Bill muſt be filed, tho' an Attorney agrees to appear and diſpence with it; but it may in ſuch Caſe be filed afterwards: And a Bill cannot be filed againſt a Perſon privileged in Vacation, becauſe then he is not preſent in the Court. *Paſch.* 9 *W.* 3. *B. R.* And if without filing a Declaration, an Action is brought againſt an Attorney, *&c.* he may bring his Writ or Attachment of Privilege, and ſuperſede the Action.

Notice *of a Bill of* Middleſex *filed.*

MR. *C. D.* take Notice, that a Bill, whereof this is a Copy, is left againſt you in the Office, at the Suit of *A. B.* Therefore I deſire you will give me a Plea in Time. Dated this Day of, *&c.*

G. T. Attorney for the Plaintiff.

A Declaration *by Bill againſt an Attorney of* B. R.

Middleſex, ſſ. A. B. Complains of *C. D.* Gentleman, an Attorney of the Court of the Lord the King, before the King himſelf, being preſent here in Court, in his proper

proper Person; for that, to wit, That whereas, &c. (as the Case is) and if it be in *Debt*, then say; of a Plea that he render to him Twenty Pounds, which he owes to him, and unjustly detains, &c. (so go on with the Declaration, concluding with) And therefore he prays Relief, &c.

The Plaintiff in proper Person.

Pledges of Prosecution { *John Doe*, *Richard Roe*.

A Declaration *by a* Clerk *of the Office.*

Middlesex, to wit. A. B. Gentleman, one of the Clerks of *Edward Ventris*, Esq; Chief Clerk of the Lord the King, assigned to inrol Pleas in the Court of the said Lord the King, before the King himself, according to the Liberties and Privileges for such Chief Clerk and his Clerks, used and approved of in the same Court, from the Time whereof the Memory of Man is not to the contrary, being present here in Court in his proper Person, complains of *C. D.* in Custody of the Marshal, &c. For that, to wit, that whereas, &c. in Case.

An Attachment of Privilege *for a Clerk in Court.*

GEORGE, *&c.* To the Sheriff of *S.* Greeting: We command you, that you Attach *C. D.* and *E. F.* if they may be found in your Bailiwick, and keep them ſafely, ſo that you have their Bodies before us at *Weſtminſter*, on the Day, *&c.* next after, *&c.* To Anſwer to *A. B.* Gentleman, one of the Clerks of *Edward Ventris*, Eſq; Chief Clerk of our Clerks aſſigned to inrol Pleas in our Court before us, according to the Liberties and Privileges for ſuch Chief Clerk and his Clerks, from the Time whereof the Memory of Man is not to the contrary, uſed and approved of in the ſaid Court, of a Plea of Debt, *&c.* and have you there this Writ. *Witneſs*, &c.

A Writ of Privilege *for an Attorney of* B. R.

GEORGE the Second, *&c.* To the Mayor, Aldermen and Sheriffs of *London*, and every of them, Greeting: Whereas as well by Reaſon of our Royal Dignity, as by ancient Cuſtom Time out of the Memory of Man hitherto uſed and approved of, it hath obtained, that all and every our Chief Clerks, aſſigned to inrol Pleas in our Court before us, and their Clerks for the Time being, ought not, nor during the whole Time aforeſaid have been accuſtomed, to be compelled to anſwer before any Secular Judges whatſoever, otherwiſe than in our

our Court before us, upon any Pleas, Plaints or Demands, Pleas of Freehold only excepted. And now on the Behalf of *A. B.* Gentleman, one of the Clerks of *Edward Ventris*, Eſq; &c. we are informed, (or we have received Information by the great Complaint of *A. B.* one of the Attornies of our ſaid Court before us) that notwithſtanding the Dignity and Cuſtom aforeſaid, certain ill-diſpoſed Perſons intending to diſquiet the ſaid *A. B.* have impleaded him by divers Plaints levied in our Court before you, whereby he is unable to attend his Office upon ſeveral Affairs and Suits depending in our ſaid Court before us; which if it be permitted, in Contempt of our Dignity, will be to the manifeſt Hurt and Enervation of the Cuſtom aforeſaid, and to the Derogation and Diminution of the Juriſdiction of our ſaid Court before us, and the Liberties and Privileges thereof: And becauſe we are willing that the Juriſdiction, Privileges and Cuſtoms, for ſo long Time uſed and approved of, in our ſaid Court before us, ſhould be inviolably obſerved; therefore we command you, and every of you, that you deſiſt from proceeding in the Plaints aforeſaid, and all and ſingular Pleas whatſoever, depending in our Court before you, or either of you, againſt the ſaid *A. B.* by whatſoever Name he ſhall be therein reputed, (Pleas of Freeholds only excepted) altogether informing the ſaid Parties, Plaintiffs in the ſaid Complaints, that they may proſecute their ſaid Plaints in our Court before us, if they think fit ſo to do. *Witneſs*, &c.

Of

Of Informations in the Court of B. R. and other Courts.

An Information for the King is the same which for a common Perſon is called Declaration; and it is not always brought directly by the King, or his Attorney General, and the Clerk of the Crown in *B. R.* but frequently by ſome other Perſon, who informs as well for the King as for himſelf, upon the Breach of ſome Penal Law or Statute, wherein a Penalty is given to the Party that will ſue for the ſame; And this is termed an Information *Qui tam*.

Informations may be brought for Offences and Miſdemeanors, by the Common Law; as for Batteries, Conſpiracies, Nuſances, Contempts, Libelling, ſeditious Words, abuſing the King's Commiſſion to the Oppreſſion of the Subject, *&c.* and in very many Caſes by Statute, wherein the Party offending is liable to a Fine, or other Penalty. But an Information upon a Penal Statute muſt be ſued in the Court of *B. R.* or in one of the ſuperior Courts, and cannot be brought in any inferior Court; becauſe the King's Attorney can't be there to acknowledge or deny, as he can in a ſuperior Court: And if a Perſon exhibits his Information merely to vex the Defendant, he may bring an Information againſt the Informer upon the Statute 18 *Eliz.* *Finch* 340. 2 *Bulſt.* 18.

By Statute, all Informations on Penal Statutes, brought by an Informer where a Sum certain is given to the Proſecutor, muſt be brought in the proper County, and within a Year

Year after: But a Party who is not a common Informer, is not obliged to bring his Information in the proper County, but may inform in what County he pleases; also the King may exhibit an Information in two or three Years, and it will be good. When any Information is given by Statute, to be prosecuted at the Assises, &c. the Informer on filing the same must make Oath before a Judge, that the Offence was not committed in any other County; and that he believes it was done within a Year next before the filing of his Information. And where an Information is ordered to be filed upon Affidavit made, the Court will not suffer the Plaintiff to put any more or other Matter into it, than what only is in the Affidavit. *Stat.* 31 *Eliz.* c. 5. 21 *Jac.* 1. c. 4. *Cro. Eliz.* 645. *Cro. Jac.* 366. *Mich.* 19 *W.* 3. *B. R.*

Informations, &c. upon Statutes, made before the Statute 21 *Jac.* 1. are by that Act to be laid and prosecuted in the County where the Fact was done; but this doth not extend to any Offence created since that Statute, so that Prosecutions on subsequent Penal Statutes, are not restrained thereby. Tho' it is held, that the Stat. 21 *Jac.* 1. c. 4. restrains the Jurisdiction of *B. R.* in Actions of Debt by common Informers, and that they cannot bring Debt upon the Statute in that Court, unless the Cause of Action arise in the County where the King's Bench sits; but must in other Cases prosecute by Information before Justices of Assise, &c. as the Statute directs. 1 *Salk.* 372, 373.

Informers are to exhibit their Suits in proper Person; by way of Information, or original Action; and they are not to compound with

the Defendant, without Consent of the Court, on Pain of 10*l.* &c. But Informations of Officers, and on the Statutes of Maintenance, Champerty, concerning Concealments of Customs, &c. are out of the Statute; and it extendeth not to Parties grieved, and those to whom any Forfeiture is given in certain. 18 *Eliz. c.* 5. And the Statute 4 & 5 *W.* & *M.* ordains, That Informations brought in the Crown-Office for Trespass, Battery, &c. shall be by Order of Court; and Recognizances to be entered into of 20*l.* Penalty for the Informer to prosecute with Effect, &c. And in Case any Person against whom such Information is exhibited, shall appear and plead to Issue, and the Prosecutor do not proceed to Trial within a Year after the Issue joined; or if it shall pass for the Defendant, or the Informer procure a *Nolle Prosequi*, &c. the Court shall award the Defendant Costs; except it be certified that there was reasonable Cause for the Information. 4 & 5 *W.* & *M. c.* 18.

Informations by the Attorney General remain as they were at Common Law, notwithstanding this last Statute: And when he exhibits an Information, it is done *ex officio*; whereas when the Clerk of the Crown does it, it is generally by Order of Court. The Attorney General may proceed in an Information for the King, if the Informer dies: Nonsuit of an Informer is no Bar against the King; and if the King's Attorney enter a *Nolle Prosequi* it is not any Bar as to the Informer. And if a Defendant plead *Nil debet* to an Information *Qui tam*, &c. it is safest to say he owes nothing to the Informer, nor to the King, which is an Answer

to the whole. *Cro. Eliz.* 583. 1 *Leon.* 119. 5 *Mod.* 464.

If an Information is brought on Breach of a Statute, and it is alledged from a Matter in *pais*, the Defendant may plead that he owes nothing, or not guilty, *&c.* And if there are more Defendants than one, they ought to plead ſeverally, and not jointly: But if it be alledged from a Matter of Record, the Record not being triable by the Country, but by it ſelf, ſuch Plea is not good. And where the Defendant hath Matter to plead in his Diſcharge, it is ſaid that ſhould be ſpecially pleaded, and he cannot give it in Evidence; tho' this ſeems to be contrary to the Statute 21 *Jac.* 1. A Prior Suit depending, a Pardon or Releaſe may be pleaded to an Information: The Replication to which Pleas in *B. R. &c.* is to be made by the Attorney General; and before Juſtices of Aſſiſe, by the Clerk of the Aſſiſe; but it may be by the Plaintiff in the Name of the Attorney General, in Information *Qui tam. Bro. Iſſues* 23. 2 *Hawk.* 277.

The Law requires Certainty in an Information, like unto an Action, to demand what is due; and if the Informer make no Demand, or demand what appears not to be his Due, the Information is ill: Though where an Information contains ſeveral Things againſt a Statute, and it is well laid as to ſome of them, but Defective as to the reſt, the Informer may have Judgment for ſo much as is well laid. Fines aſſeſſed in Court by Judgment on an Information cannot be afterwards qualified or mitigated. 2 *Hawk.* 261, 266. *Hob.* 242. *Cro. Car.* 251.

If

If two Informations are had upon the very ſame Day, they mutually abate each other; for there is no Priority to attach the Right of the Suit in one Informer, more than in the other. And for Inſufficiency in an Information, the Defendant muſt demur thereto; and it ſhall not be otherwiſe quaſhed. *Hob.* 138. 2 *Lill. Reg.* 59.

An Information *brought by the Attorney General.*

BE it remembered that *T. W.* Eſq; Attorney General of the Lord the King that now is, who proſecutes for the ſaid Lord the King, being preſent here in Court, the Day, &c. this ſame Term, in his own Perſon, for the ſaid Lord the King, gave the Court here to underſtand and be informed, That whereas all that Meſſuage called, &c. with the Lands and Appurtenances thereunto belonging and appertaining, ſituate and being in the Pariſh of, &c. in the County of *W.* aforeſaid, in the Hands and Poſſeſſion of the ſaid Lord the King that now is, the Day of, &c. in the Year of the Reign, &c. and long before, were and of Right ought to be, and yet are held as in Right of his Majeſty's Crown of *England*, as in many Records, Rolls and Remembrances, &c. it more fully appeareth of Record: Yet one *A. B.* and *C. D.* little regarding the Laws and Statutes of the ſaid Lord the King, but intending the Diſinheriting of the Lord the King in the Premiſſes, with Force and Arms, &c. on the aforeſaid Day of, &c. in the Year, &c. aforeſaid, in and upon the Poſſeſſion of the ſaid Lord the King, that now is, of the Premiſ-

ſes, entered and intruded, and the Iſſues and Profits thereof ariſing took and had to their own Uſes, and ſtill take and have; and the ſame Treſpaſs hitherto and yet continuing, in Contempt of the ſaid Lord the King, and againſt his Laws. Whereupon the aforeſaid Attorney General of the ſaid Lord the King that now is, for the ſaid Lord the King, prays the Advice of the Court in the Premiſſes; and that the aforeſaid *A. B.* and *C. D.* may come here to anſwer the Lord the King, *&c.* Upon which, *&c.* and the Sheriff of the ſaid County, that he attach the ſaid *A. B.* and *C. D.* in Form aforeſaid, ſo as on the Day, *&c.*

An Information *for converting arable Land into Paſture, againſt the* Stat. 39 Eliz.

BE it remembered that *A. B.* who proſecutes as well for our Lord the King as for himſelf, came before our Sovereign Lord the King at *Weſtminſter*, the Day of, *&c.* that ſame Term, in his proper Perſon; and as well for the ſaid Lord the King as for himſelf, giveth this Court here to underſtand and be informed, that Sixty Acres of Arable Land with the Appurtenances lying in *H.* in the County of *M.* aforeſaid, the Day, *&c.* in the Year, *&c.* were uſed for Tillage, the ſame Lands being before Tillable Lands, ſuch as before the Converſion, according to the Nature of the Ground and Courſe of Husbandry in that Part of the Country uſed, of which ſaid Sixty Acres of Land one *C. D.* the Day of, *&c.* in the Year of, *&c.* and long before, and continually afterwards, until the

Day

Day of exhibiting this Information was, and ſtill is Occupier and Poſſeſſor; and his Occupancy and Poſſeſſion thereof from the ſame Day and in the Year, &c. aboveſaid, from thence until the Day of exhibiting of this Information, the ſaid Sixty Acres of Lands diſcontinued in the Uſe of Tillage, and uſed not for Tillage for Corn and Grain as they ought to have been uſed, according to the Form of the Statute of the 39 Year of Queen *Elizabeth* in this Caſe made and provided; but the ſaid *C. D.* during the whole Time aforeſaid, to wit, the ſame Day in the Year, &c. aforeſaid, and continually from thence until the ſaid Day of exhibiting this Information, that is to ſay, by the Space of one whole Year, the ſame Sixty Acres of Land, and every Parcel thereof continued, converted and kept, and yet keepeth for Paſture, and for depaſturing of Sheep and Herbage for fatting of Cattle, againſt the Form of the Statute aforeſaid: By which an Action accrueth to the ſaid *A.* to demand and have of the ſaid *C.* for the ſaid Lord the King and for himſelf Sixty Pounds, to wit, for every Acre of the ſaid Sixty Acres of Land, ſo as aforeſaid uſed and not reſtored, Twenty Shillings, by the ſame *C.* according to the Form of the Statute aforeſaid forfeited; whereof the ſaid *A.* prays a Third Part, according to the Proviſion of the ſame Statute, and as well for the ſaid Lord the King as for himſelf, prayeth the Advice of this Court in the Premiſſes, and due Proceſs of Law againſt the ſaid *C.* in this Behalf to be made, to Anſwer as well to the ſaid Lord the King, as to the ſaid *A.* who proſecutes as well, &c. in the Premiſſes; and there are Pledges of Proſecuting *John Doe*

and

and *Richard Roe*. And upon this it is commanded to the ſaid *C. D.* that all other things omitted, and all Excuſes laid aſide, he be in his proper Perſon before the Lord the King at *Weſtminſter* on *Tueſday* next after the *Octave* of St. *Hillary* next following, to anſwer to the ſaid *A. B.* who as well, *&c.* of and in the Premiſſes, *&c.* and of this he is not to fail, under the Penalty of one Hundred Pounds.

An Information *againſt a Sheriff for Extortion, in taking exceſſive Fees for an Execution, with a Writ of* Subpœna, *and Plea.*

Middleſex, ſſ. BE it remembered, that *A. B.* who proſecutes as well for the Lord the King as for himſelf, in this Behalf, came before our Sovereign Lord the King at *Weſtminſter*, the Day, *&c.* in that ſame Term, in his proper Perſon, and exhibited to this Court a certain Information againſt *C. D.* Gent. the Tenor of which Information followeth in theſe Words, *&c. Middleſ. ſſ.* Be it remembered, that the Day of, *&c.* in this ſame Term, came before our Sovereign Lord the King at *Weſtminſter A. B.* who proſecutes as well for our Lord the King as for himſelf, in this Behalf, in his proper Perſon, and as well for the ſaid Lord the King as for himſelf giveth this Court to underſtand and be informed; That whereas in the Statute made in the Parliament of the Lady *Elizabeth*, late Queen of *England*, held at *Weſtminſter* in the County of *Middleſex*, in the Twenty-ninth Year of her Reign, amongſt o-

ther Things it was enacted by Authority of the ſame Parliament, that it ſhould not be lawful after the Firſt Day of *May* then next following, for any Sheriff or Bailiff of any Franchiſe or Liberty, nor for any of their Officers, Miniſters, Servants, Bailiffs or Deputies, or any of them, by Reaſon or Colour of their, or any of their Offices, to have, receive or take of any Perſon or Perſons, directly or indirectly, for ſerving, or executing of any Extent or Execution upon the Body, Lands, Goods or Chattels of any Perſon or Perſons whatſoever, any greater or other Conſideration or Recompence than in the ſame Act is and ſhould be limited and appointed, which ſhould be lawful to be had, received, and taken, to wit, Twelve Pence of and for every Twenty Shillings, where the Sum exceedeth not One Hundred Pounds, and Six Pence of and for every Twenty Shillings being beyond and above the ſame Sum of One Hundred Pounds, which he or they ſhould ſo levy, extend and deliver in Execution, or ſhould take the Body for in Execution, by Virtue of any ſuch Extent or Execution whatſoever; under the Puniſhment and Penalty that all and ſingular ſuch Sheriffs, Under-Sheriffs, Bailiffs of Franchiſes or Liberties, or the Miniſters, Servants, Officers, Bailiffs, or Deputies of them, or any of them, who at any Time after the ſaid Firſt Day of *May* next following after the making of the ſaid Statute, ſhould directly or indirectly do to the contrary, ſhould loſe and forfeit to the Party grieved, his Treble Damages, and alſo forfeit the Sum of Forty Pounds of good and lawful Money of *England*, for every Time which he or they, or any of them, ſhould ſo do to

the contrary, the one Moiety whereof ſhould be to the ſaid Lady the Queen, her Heirs and Succeſſors, and the other Moiety to the Party or Parties who ſhall proſecute for the ſame, by Complaint, Action, Suit, Bill or Information, wherein no Eſſoin or Wager of Law ſhall be allowed; as by the ſame Statute more fully appeareth. Notwithſtanding one *C. D.* Gent. late Under-Sheriff of *E. F.* Eſq; late Sheriff of the County of, *&c.* aforeſaid, not regarding the ſaid Statute, the Day of, *&c.* in the Year, *&c.* at *N.* in the County, *&c.* aforeſaid, then being Under-Sheriff of the ſaid *E. F.* Sheriff of the County of, *&c.* extorted by Colour of his Office of Under-Sheriff, by himſelf, and one *R. G.* then his Servant, had and receiv'd of *G. H.* Gent. for the Execution of a certain Writ of the ſaid Lord the King of *Fieri facias* out of the Court of the ſaid Lord the King here, to wit, at *W.* in the County of *Middleſex*, iſſuing at the Suit of the ſaid *G.* againſt one *T. S.* upon a certain Judgment, *&c.* and directed to the then Sheriff of, *&c.* for cauſing to be made of the Goods and Chattels of the ſaid *T.* as well a certain Debt of Twenty-five Pounds, which the ſaid *G.* in the ſaid Court had recovered againſt him, as Forty-ſix Shillings and Eight Pence, which to the ſame *G.* in the ſaid Court were adjudged for his Damages which he had ſuſtained by Occaſion of the detaining of that Debt, for levying of Fourteen Pounds, Parcel of the ſaid Debt and Damages in the ſame Writ ſpecified, beyond the Rate of 12 *d.* for every 20 *s.* by the ſaid *C. D.* delivered in Execution by Virtue of the ſaid Writ, that is to ſay, Thirty-ſix Shillings for the Delivery of the ſaid Fourteen

Pounds; againſt the Form of the Statute aforeſaid: Whereupon the ſaid *A. B.* who as well, *&c.* prayeth the Advice of this Court here in the Premiſſes; and that the ſaid *C. D.* may forfeit Forty Pounds for his ſaid Offence, contrary to the Form of the Statute aforeſaid done and committed; and that the ſame *A.* who proſecutes as well, *&c.* may have the Moiety of the ſaid Forfeiture, according to the Form of the Statute aforeſaid; and alſo that the ſaid *C. D.* may come into this Court, to anſwer of and upon the Premiſſes, *&c.* and Pledges to proſecute *John Doe*, *Richard Roe*. And hereupon it is commanded to the ſaid *C.* that all other Things omitted, *&c.* he be in his proper Perſon before the Lord the King at *Weſtminſter* on the Day, *&c.* next coming, to anſwer as well to our ſaid Lord the King, as to the ſaid *A.* who proſecutes, *&c.* of and in the Premiſſes, and further to do and receive what the Court of the ſaid Lord the King now here ſhall conſider of in this Particular, *&c.*

At which ſaid Day came before our ſaid Sovereign Lord the King at *Weſtminſter*, as well the ſaid *A.* who proſecutes, *&c.* in his proper Perſon, as the ſaid *C.* by *J. W.* his Attorney, by the Favour of this Court ſpecially admitted; and hereupon the ſame *A.* who as well, *&c.* prays that the ſaid *C.* to the Premiſſes in this Information aforeſaid ſpecified may anſwer, *&c.* And the ſaid *C.* by his Attorney aforeſaid, defends the Force and Wrong, when, *&c.* and all Contempt, *&c.* and whatſoever, *&c.* and prayeth the Hearing of the Information aforeſaid; and it is read unto him, *&c.* which being read and heard, the ſame *C.* prays Imparlance until

Tueſday

Tueſday next after, *&c.* and hath it, *&c.* the ſame Day is given to the ſaid *A.* who as well, *&c.* there, *&c.*

An Information *for Shooting in a Gun, againſt the Statute of* 33 Hen. 8.

BE it rememberd that *A. B.* of, *&c.* who proſecutes as well for our Lord the King as for himſelf, came before our Sovereign Lord the King at *Weſtminſter*, the Day, *&c.* this ſame Term, in his proper Perſon; and as well for the ſaid Lord the King as for himſelf, gives this Court here to underſtand and be informed, that one *C. D.* of *L.* in the County, *&c.* Yeoman, at divers Times, between the Day, *&c.* in the Year of, *&c.* and the Day of exhibiting this Information at *L.* aforeſaid, uſed to ſhoot with a Fowling-piece at divers Pigeons and other Birds, and on the Day, *&c.* aboveſaid, with the ſame Fowling-piece, then loaded with Gunpowder and Hail-ſhot, at *L.* aforeſaid at certain Pigeons he there ſhot; and alſo on the, *&c.* in the Year aboveſaid, with the ſame Fowling-piece, then likewiſe loaded with Gunpowder and with Hail-ſhot, at divers other Pigeons there ſhot; and alſo the Day, *&c.* in the Year aforeſaid, with the ſame Fowling-piece, then loaded with Gunpowder and Hail-ſhot, at certain other Pigeons he there ſhot; and divers Pigeons at every one of the ſaid Shots killed, againſt the Form of the Statute in this Caſe provided: By which the ſaid *C.* hath forfeited to the ſaid Lord the King Thirty Pounds, to wit, for every Shot of the ſaid Shots Ten Pounds, of which ſaid

Thirty Pounds by the ſaid *C.* as aforeſaid forfeited, the ſaid *A.* who as well, *&c.* demandeth one Moiety, according to the Form of the Statute aforeſaid; and that the ſaid *C.* may come into this Court to Anſwer as well to our ſaid Lord the King, as the ſaid *A.* who proſecutes as well, *&c.* in the Premiſſes, *&c.* Pledges to proſecute *John Doe* and *Richard Roe.*

An Information *for taking away Goods imported, without paying the Cuſtoms.*

BE it remembered, that *A. B.* who as well for our Lord the King as for himſelf, *&c.* giveth the Court here to underſtand and be inform'd, that one *C. D.* of, *&c.* Merchant, between the Firſt Day of *May* in the Year, *&c.* and the Thirtieth Day of *September* then next following, in a certain Ship called the *George* of *Briſtol*, brought and carried into this Kingdom of *England*, into the Port of the City of *B.* in the County of the ſame City, by way of Merchandizing, Fifty Hogſheads of Allum, of the Value of One Thouſand Pounds, as of the proper Goods and Chattels of the ſaid *C.* and the ſame Fifty Hogſheads of Allom out of the ſaid Ship in the Port aforeſaid, to Land there within the Time aforeſaid, carried and placed, and the ſame took and carried from thence, the Cuſtom, Subſidy and Poundage and other Duties to the ſaid Lord the King therefore due, not being paid, nor any Agreement or Compoſition had or made with the Collector thereof or his Deputy, with or by the Knowledge or Conſent of the Comptroller or Surveyor in that Behalf aſſigned, or

of

of one of them therein, againſt the Form of the Statute in that Caſe made and provided; whereupon the ſaid *A. B.* who as well, &c. prays the Advice of this Court, and that the ſaid *C.* may forfeit the Goods and Chattels aforeſaid, according to the Form of the Statute aforeſaid, and that the ſame *A. B.* the Moiety of the Value of the ſame Goods and Chattels ſo forfeited may have, &c. and that the ſaid *C. D.* may come here into Court to anſwer of and in the Premiſſes, &c. Pledges to proſecute, &c.

An Information *upon the Statute for Ingroſſing, and a Plea, Traverſe, and Judgment on Demurrer.*

BE it remembered, that *A. B.* of *London*, Gent. who as well for the ſaid Lord the King as, &c. informeth the Court the Day, &c. in the Year of, &c. that one *C. D.* of, &c. ingroſſed between the Firſt Day of *November* laſt paſt and the Day of exhibiting this Information, at the City of *Weſtminſter*, &c. One Hundred Quarters of Wheat, the Price of every Quarter thereof Thirty Shillings, &c. contrary to the Statute, &c. whereupon the ſaid *A. B.* &c. And that the ſaid *C. D.* may anſwer, &c. And the ſaid *C. D.* by, &c. defends himſelf againſt the Force and Wrong, and all Contempt, and whatſoever, &c. when this Court, &c. and prayeth the Hearing of the Information aforeſaid, and it is read to him, &c. which being read and heard, the ſaid *C.* ſaith, that he doth not intend that the ſaid Lord the King, or the ſaid *A.* ſhould or ought further to charge the ſaid *C.* by Occaſion of the

Premiſſes; becauſe as to the Buying Seventy Quarters of Wheat, of the ſaid One Hundred Quarters of Wheat in the Information above ſpecified, the ſame *C.* ſaith, that he is in no wiſe Guilty thereof; and of this he puts himſelf upon the Country; and the ſaid *A.* who as well, *&c.* likewiſe doth the ſame, *&c.* And as to the buying of Thirty Quarters of Wheat, Reſidue of the ſaid One Hundred Quarters of Wheat in the Information aforeſaid above ſpecified, the ſaid *C.* ſaith, that the ſaid Lord the King or the ſaid *A.* ought not to charge the ſame *C.* by Occaſion of the buying of the ſaid Thirty Quarters of Wheat; becauſe he ſaith, that before the exhibiting of the ſaid Information, to wit, the Day of, *&c.* in the Year, *&c.* one Sir *E. F.* Knt. *G. H.* and *J. K.* Eſqs; Juſtices of the ſaid Lord the King to keep the Peace in the ſaid County of, *&c.* at the General Seſſions of the Peace of the ſaid Lord the King, held at, *&c.* the ſame Day, *&c.* and Year aboveſaid, by their certain Writing bearing Date, *&c.* Sealed and Signed with their own Hands and Seals, in the open Court at the Seſſions of Peace aforeſaid, the ſaid Sir *E. F.* being then of the *Quorum*, did licence, admit, aſſign and allow the ſaid *C.* by the Name of *C. D.* of, *&c.* in the County, *&c.* Yeoman, to be a common Badger, Carrier and Buyer of all manner of Corn whatſoever, in open Markets and Fairs only, and not elſewhere, to uſe and occupy the ſaid Office according to the Tenor and true Intention of the Statute of 5 *E.* 6. and alſo of the Statute of the Fifth Year of Queen *Elizabeth* againſt Foreſtallers, Regrators and Ingroſſers, from the Day of the Date of the ſaid Licence, for and during the Space of One whole Year

Year then next following, as by the ſaid Writing brought here into Court doth more fully appear: By Virtue of which Licence, the ſaid *C. D.* afterwards, to wit, between the ſaid Day, *&c.* in the Information above ſpecified, and the Day of, *&c.* in the Year aboveſaid, the ſaid Thirty Quarters of Wheat in open Markets and Fairs within the ſame County of, *&c.* bought, with Intention to ſell the ſaid Wheat again, as it was lawful for him to do; with this that the ſaid *C.* will verify that he the ſaid *C.* at the Time of the granting the ſaid Licence, at, *&c.* aforeſaid was married and an Houſholder, and of the Age of Thirty Years, and then had inhabited within the ſaid County of, *&c.* by the Space of Three Years, before the Date of the ſaid Licence; without that the ſaid *C.* the ſaid Thirty Quarters of Wheat, or any Part thereof bought in the ſaid County of *M.* as the ſaid *A.* who as well, *&c.* by his Information aforeſaid above hath ſuppoſed; and this he is ready to verify; whereupon he prays Judgment if the ſaid Lord the King, or the ſaid *A. B.* ought, *&c.* (here the Informer Demurs to the Bar, and the Defendant joins in a Demurrer, and the Parties have Day by Continuance until *Friday* next after, *&c.*)

At which Day came here as well the ſaid *A. B.* who as well, *&c.* in his proper Perſon, as the ſaid *C. D.* by his Attorney aforeſaid, and hereupon the Premiſſes being ſeen, and fully underſtood, whereupon the Parties aforeſaid put themſelves on the Judgment of the Court; for that it ſeemed to the Juſtices here, that the Plea of the ſaid *C.* as to the Ingroſſing and obtaining into the Hands of him the ſaid *C.* of the

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ſaid Thirty Quarters of Wheat, Reſidue of the ſaid One Hundred Quarters of Wheat in the Information aforeſaid ſpecified, is inſufficient in Law to bar the ſaid *A. B.* who as well, *&c.* from having his Information aforeſaid thereof againſt the ſaid *C. D.* Therefore it is conſidered, that the ſaid *A. B.* who as well, *&c.* do recover, as well for the ſaid Lord the King as for himſelf, againſt the ſaid *C. D.* Forty-five Pounds, for the Value of the ſaid Thirty Quarters of Wheat, and that the ſaid Lord the King have one Moiety thereof, and the ſaid *A. B.* have the other Moiety of the ſame; and the ſaid *C. D.* be taken, *&c.*

Of Proceedings in Ejectment in B. B. and C. B.

THE Law relating to this Head being treated of under *Action of Ejectment*, in the Firſt Volume; I ſhall here add ſome further Informations concerning the Practice, and the late Statutes and Orders of Court, with Precedents in the whole Proceſs thereof.

In Ejectment, where there are divers Defendants for the ſame Premiſſes, that are ſeverally intereſted, if the Plaintiff moves to join them all in one Declaration, the Court will not do it; but the Plaintiff muſt deliver ſeveral Declarations to each of the Defendants. The Service of the Plaintiff's Declaration, before the late Act of Parliament, muſt have been made to the Tenant himſelf, or to his Wife, and not to any of his Servants, *&c.* And the Reaſon was, becauſe the Tenant by having explained to him

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the Meaning of the Declaration, had ſufficient Warning to defend himſelf; and this was not thought reaſonable ſhould come at ſecond Hand to the Tenant, unleſs from the Wife who is preſumed to be equally concerned in Intereſt. After the Declaration ſerved, the Plaintiff's Attorney was obliged to make Oath, that he delivered to the Tenant in Poſſeſſion of the Premiſſes in Queſtion a true Copy of the annexed Declaration, with the Notice to appear thereon indorſed, which he read to him, and acquainted him with the Contents.

This Affidavit was to be poſitive that he was Tenant in Poſſeſſion, or that he acknowledged himſelf to be ſo; for no Man ſhould be turn'd out of Poſſeſſion for his Default, without a poſitive abſolute Affidavit, on which he might charge the Plaintiff with Perjury: And upon this Affidavit they moved for Judgment againſt the caſual Ejector; which was granted, if the Defendant did not in due Time enter into the common Rule; and the Declaration againſt the caſual Ejector ought to be delivered before the Eſſoin-Day of the iſſuable Term, when the Cauſe is deſign'd to be tried; and it hath been adjudg'd, that there ought to be a *Latitat* ſued out againſt the Ejector, and common Bail filed, otherwiſe the Judgment may be ſet aſide on Motion.

The Rule in *C. B.* is that the Defendant ſhall forthwith appear, and receive a Declaration, ſo that there is no Neceſſity of an Original Writ; nor can he take any Advantage for Want of an Original, except in a Writ of Error: But when Writ of Error is brought, an Original muſt be filed, if it be not after a Verdict, when it is helped

helped by the Statute. And at this Time in *B.R.* there is no need of a Writ of *Latitat*, or Bill of Ejectment; but the Party muſt file a Bill of Ejectment, beſides the Plea-Roll, in Caſe a Writ of Error be brought before the Errors are aſſigned, and Bail is to be filed before he can proceed: Here the Court has no Authority for proceeding in Ejectments by Bill, until the Defendant is in Cuſtody; therefore Bail by the Rule is ordered.

But it is not the Practice, to file a Bill in the Office againſt ſuch a Perſon as a Priſoner of the Court, ſuggeſting he is delivered to Bail, he being bound by the Rule to receive a Declaration; and ſo they need only make up the Plea-Roll, until a Writ of Error is brought, when they muſt file their Bill of Ejectment, becauſe in the Writ of Error no Notice is taken of the Rule; and therefore a Bill is to be filed againſt the Defendant, as the Priſoner of the Court, that a proper Perſon privileged may appear to the Superior Juriſdiction, and a proper Suit be commenced againſt him. Yet in the Court of *B. R.* they may proceed by Original, as well as by Bill; becauſe Ejectment is an Action of Treſpaſs, which is originally cognizable in this Court, it being a Criminal Cauſe, for which there is a Fine due to the King; and there is a Declaration delivered as in *C. B.* that the Defendant was attach'd to anſwer, *&c.*

A Plaintiff in Ejectment generally makes ſome Friend of his Defendant; but if the Tenant appears, he muſt enter into a Rule to be made Defendant inſtead of the Caſual Ejector, and to confeſs a Leaſe, Entry and Ouſter, and at the Trial to ſtand upon the Title only; and then

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in the Place of your First Defendant the Ejector, you put into your Declaration, which must be drawn *de Novo*, the New Defendant mentioned in the Rule, and his Addition, *&c.* And after the Declaration leaving out the Notice, *&c.* then the Defendant's Attorney must plead Not Guilty, and you draw up your Issue, leaving out all the Memorandum, a Copy of which, as well as of the Declaration, is to be delivered to the Defendant's Attorney, and give him Notice of Trial: Having made your *Venire* and returned it, you are to make out the *Distringas* returnable the first Return of the next Term; and make up the Record, omitting the Memorandum, and beginning with the Declaration; you are then to Seal your Record, and prepare Breviates, *&c.* in which you must recite the Declaration and Plea briefly, and that the Defendant is to confess Lease, Entry, *&c.* and set forth the Plaintiff's Title, beginning with the Person last seised in Fee of the Premisses, under whom the Lessor claims, and so deduce the Title down to the Plaintiff your Client, proving the Deeds, *&c.* and after Trial the Proceedings are as in other Cases.

If at the Trial the Defendant will not appear and confess Lease, Entry and Ouster, it is usual to call him or his Attorney, and then call the Plaintiff and nonsuit him; and upon Return of the *Postea*, Judgment will be given against the casual Ejector: But here tho' the Plaintiff be Nonsuit, he shall not pay any Costs; for the Rule for confessing the Lease, *&c.* is to be carried to the Secondary, who Taxes Costs upon it to be paid by the Defendant; and if the same are not paid, the Court on Affidavit and Motion

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tion will grant an Attachment againſt ſuch Defendant; this is where the Defendant appears, and not where it wholly goes againſt him by Default. In this Action you are to recover both the Poſſeſſion and the Damages, and accordingly you have a double Execution, 1ſt, an *Habere facias Poſſeſſionem*, for the Poſſeſſion of the Lands; and 2d a *Capias ad Satisfaciend.* againſt the Body, or a *Fi. Fa.* againſt the Goods and Chattels for the Damages: Though the Entry of the Judgment is uſually with a *Remittit Dampna*, if againſt the caſual Ejector.

In the Court of Common Pleas, if you would enter a Rule for Judgment by Default, the Affidavit of Service of the Declaration may be either at the Bottom thereof, or on ſtamp'd Paper by it ſelf; and having made a Motion, you call on the Secondary to draw up your Rule againſt the caſual Ejector, which is carried to the Prothonotary to be ſigned: The Secondary upon the Motion keeps the Affidavit and Declaration, which are to be filed together to make a good Service; ſo that you ought to have another filled up by you, or you muſt fill up one from that in the Cuſtody of the Secondary. Here if the Tenant appears and enters into the common Rule by Conſent, upon this you enter an Appearance with the Filazer of the County; then you carry it to the Prothonotary to pay for the *Li. Lo.* (or Imparlance) and to the Secondary who keeps your Rule by Conſent, and fills up two others, one whereof you affix to the Copy of the Iſſue, and deliver it to the Defendant's Attorney; and then you give Notice of Trial, if you think fit.

If the Tenant in Poſſeſſion gives a Warrant of Attorney to appear, he cannot afterwards

take Advantage of the not delivering a Declaration: And when the Declaration is delivered on the Firſt or Second Day of *Eaſter* or *Michaelmas* Terms, the Tenant muſt plead the ſame Term, or the Plaintiff ſhall have Judgment; the Courſe of the Court is to make the Tenant plead, or elſe to give Judgment the ſame Term againſt the caſual Ejector, if in either of theſe Terms, (by Reaſon of the Length of them) altho' the Declaration be after the Eſſoin-Day, ſo it be within the Firſt or Second Week thereof; and in the Indorſement you muſt ſay, The Beginning of this *Eaſter Term*, *&c.* In caſe there is a Recovery in Ejectment by Verdict, Action may be brought to recover the meſne Profits of the Lands from the Time of the Defendant's Entry laid in the Declaration; and this Action ſhall be had either by the Plaintiff in Ejectment, or by the Leſſor of the Plaintiff; tho' where the Plaintiff brings it, he needs only produce the *Poſtea* of his Recovery; but when the Leſſor brings the Action, he muſt prove his Title over again, if it be inſiſted upon by the other Side, otherwiſe he will be nonſuited.

There may be a new Trial in Ejectment, where the Plaintiff who has the real Title is caſt at the firſt Trial; and if he brings it on again, it is beſt to lay the Demiſe to the Plaintiff of a Prior Date to the Demiſe of the former Action, if he had then any Title; and declare that the Defendant the ſame Day *intravit & ejecit*, *&c.* By this means, if he recovers, he may afterwards have his Action for the meſne Profits, and recover from the Day of the Demiſe; whereby he will reimburſe himſelf what Profits were recovered againſt him on the former Trial. On

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Witneſſes not being able to Travel, &c. if Motion be made by the Defendant to put off Trial to another Term, it has been granted by the Court, the Defendant giving Security for the meſne Profits.

By the Orders of the Court of *B. R.* Rules to anſwer, &c. in Ejectment are to be entered, before any Motion ſhall be made for Judgment againſt the Ejector: And to prevent undue Practices relating to Declarations in Ejectment, brought and delivered to the Secondaries of *C. B.* in order to have Rules to plead; it is order'd that no ſuch Declaration ſhall be taken in or received, unleſs it be ſigned by ſome Serjeant at Law, and delivered by himſelf, to one of the Secondaries in open Court. And the Secondaries ſhall the next Morning after the End of every Term, and at all other Times when required, ſhew to any Perſons that ſhall demand the ſame, their Alphabetical Paper of Ejectments moved or delivered into Court. *Ord. Hill.* 2 *Geo.* 2.

By an Act 6 *Ann. c.* 18. Perſons poſſeſſed as Guardians or Truſtees, or ſeiſed in the Right of their Wives, and Perſons having Eſtates determinable upon Life or Lives, holding over without Conſent of the Party next intitled, ſhall be adjudged Treſpaſſers; and the Perſon entitled, his Executors and Adminiſtrators, may recover againſt ſuch Perſons holding over, their Executors and Adminiſtrators, the Value of the Profits receiv'd, by this Action of Ejectment.

By the late Act 4 *Geo.* 2. *c.* 28. It is enacted, that if any Tenant for Life, or Term of Years, or other Perſon coming into the Poſſeſſion of Lands or Tenements by Colluſion with ſuch Te-

nant, ſhall wilfully hold over any Lands, &c. after the Determinations of their Terms, and after Demand made, or Notice given in Writing, for delivering of the Poſſeſſion thereof, by the Landlord or Leſſor; the Perſon ſo holding over ſhall pay double the Yearly Value, recoverable by Action of Debt, and the Defendant in ſuch Action ſhall give ſpecial Bail, and have no Relief in Equity.

And in all Caſes between Landlord and Tenant, when Half a Year's Rent ſhall be in arrear, the Landlord having lawful Right to re-enter for Non-payment, may ſerve a Declaration in Ejectment, without formal Demand or Re-entry, or affix ſuch Declarations on the Door of any demiſed Meſſuage, or any notorious Place of the Land, which ſhall be deemed a legal Service; and on Proof that Half a Year's Rent was due before the ſaid Declaration was ſerved, and no ſufficient Diſtreſs on the Premiſſes, the Leſſor ſhall recover Judgment and Execution as fully as in caſe a formal Re-entry had been made; and if the Leſſee ſhall ſuffer Judgment to be recovered on ſuch Ejectment in Execution, without paying the Arrears and Coſts, and without filing a Bill to be relieved within Six Months after Execution, he ſhall be barred from all Relief in Law or Equity, other than by Writ of Error, and the Leſſor ſhall hold the demiſed Premiſſes as diſcharged from ſuch Leaſe: But not to Bar the Right of any Mortgagee, ſo as he pays all Rent in arrear and Coſts, within Six Months after Judgment obtained, and perform all the Covenants of the Leſſee.

If a Leſſee ſhall within the Time aforeſaid, file a Bill for Relief in Equity, no Injunction

is to be granted, unleſs he within Forty Days after an Anſwer filed by the Leſſor, ſhall depoſit in Court the whole Rent in Arrear, beſides Coſts, Subject to the Decree of the Court; and if the Leſſor actually enter into the Poſſeſſion of the Demiſed Premiſſes, and the Leſſee on filing a Bill obtain a Decree in his Favour, the Leſſor ſhall be accountable only for the Profits really made on the Premiſſes during his Poſſeſſion, and the Leſſee is to pay to the Leſſor ſo much Money as that fell ſhort of the whole Rent in Arrear, before he be reſtored to his former Poſſeſſion.

But if the Tenant, before the Trial in Ejectment, will either tender to the Leſſor, or bring into Court the Rent in Arrear, together with Coſts, all further Proceedings ſhall ceaſe; and if the Leſſee be relieved in Equity, he ſhall enjoy the Demiſed Premiſſes, according to the Leaſe thereof, without obtaining a New One.

Theſe are the Statutes relating to Ejectment: And to proceed in the Old Way, where the Premiſſes are not inhabited; or where the ſeveral Intereſts of the Leſſors of the Plaintiff are unknown; and when a Corporation is Leſſee of the Land, *&c.* there muſt be a Leaſe to try the Title, and an Original, *&c.*

A Leaſe in Ejectment, in order to recover the Poſſeſſion.

THIS Indenture, made the Day of, *&c.* in the Year of the Reign, *&c.* and in the Year of our Lord, *&c. Between A. B.* of, *&c.* Gent. of the one Part, and *C. D.* Gent. of the other

other Part, *Witneſſeth* that the ſaid *A. B.* for divers good Cauſes and Conſiderations him thereunto moving, hath Demiſed, Granted, and to Farm letten, and by theſe Preſents doth Demiſe, Grant and to Farm let unto the ſaid *C. D. All* that his Meſſuage commonly called or known by the Name of, *&c.* ſituate, lying and being in the Pariſh of, *&c.* in the County of *S.* and late in the Poſſeſſion of *E. F. &c. To have and to hold* the ſaid Premiſſes, with the Appurtenances, from the Date of theſe Preſents, for and until the full End and Term of Five Years from thence next enſuing, and fully to be compleat and ended: *Provided* always, and upon Condition, that if the ſaid *A. B.* his Executors or Adminiſtrators, ſhall at any Time after the Day, *&c.* of this preſent Month, *&c.* tender to the ſaid *C. D.* his Executors or Adminiſtrators, One Shilling, then this Indenture, and every Thing therein contained ſhall be void and of none Effect, any Thing herein contained to the contrary in any wiſe notwithſtanding. *In Witneſs* whereof the Parties aforeſaid have hereto interchangeably ſet their Hands, *&c.*

A Pone *for an Original in* Ejectment.

Somerſ. ſſ. IF *A. B.* ſhall make you Secure, *&c.* then put *C. D.* late of, *&c.* in the County aforeſaid, Yeoman, to Anſwer to the ſaid *A. B.* in a Plea, wherefore he with Force and Arms into one Meſſuage, Twenty Acres of Land, Fifteen Acres of Meadow, and Ten Acres of Paſture with the Appurtenances in *M.* which *E. F.* hath Demiſed to the ſaid *A. B.* for

a Term not yet paſt, hath entered, and him from his Farm aforeſaid ejected, and other Wrongs to him did, to the great Damage, &c. and againſt the Peace, &c. (Returnable in Eight Days of St. *Hillary*, whereſoever, &c. into the *King's Bench.*)

A Declaration *in Ejectment by Original.*

SOmerſet. *C. D.* late of *M.* in the ſaid County, Yeoman, was attached to anſwer *A. B.* of a Plea, wherefore with Force and Arms he entered into one Meſſuage, one Barn, a Stable, Twenty Acres of Land, &c. with the Appurtenances in *M.* in the County aforeſaid, which *E. F.* Gent. demiſed to the ſaid *A.* for a Term that is not yet expired, and from his ſaid Farm ejected him, and other Wrongs to him did, to the great Damage of the ſaid *A.* and againſt the Peace of our Sovereign Lord the King; And whereupon the ſaid *A. B.* by *W. J.* his Attorney complains, that whereas the aforeſaid *E. F.* on the Day, &c. in the Seventh Year of the Reign of our ſaid Lord the now King, at *M.* aforeſaid, had demiſed to the ſaid *A.* the Tenements aforeſaid with the Appurtenances, for him the ſaid *A.* and his Aſſigns, to have and to hold the ſaid Tenements with the Appurtenances, from the Day of, &c. then laſt paſt, unto the full End and Term of Five Years thence next following, and fully to be compleat and ended: By Virtue of which ſaid Demiſe the ſaid *A.* entered into the ſaid Tenements, with the Appurtenances, and was poſſeſſed thereof; and being ſo thereof poſſeſſed, the ſaid *C.* afterwards, that is to ſay, the ſame, &c. Day of

of, &c. in the Year, &c. aforeſaid, with Force and Arms, to wit, with Swords, Staves, &c. into the Tenements aforeſaid, with the Appurtenances, which the ſaid *E. F.* demiſed to the ſaid *A.* in Manner aforeſaid, for the Term aforeſaid not yet expired, entered and ejected the ſaid *A.* from his ſaid Farm, and did him other Wrongs, to the great Damage of the ſaid A. and againſt the Peace of our ſaid Sovereign Lord the King; whereby the ſaid *A.* ſays, he is injured and endamaged to the Value of Twenty Pounds; and therefore he brings his Suit, &c.

A Declaration *by Bill in Ejectment.*

Mich. Seventh King Geo. II.

South'ton. A. *B.* complains of *C. D.* in the Cuſtody of the Marſhal of the *Marſhalſea* of our Sovereign Lord the King being, before the King himſelf; for that whereas *E. F.* Gent. on the Day of, &c. in the Seventh Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. at *S.* in the County aforeſaid, had Demiſed, Granted and to Farm let to the ſaid *A.* Two Meſſuages, and Two Gardens, &c. (reciting the Parcels) with the Appurtenances, ſituate, lying and being in the Pariſh of, &c. in the County of *S.* aforeſaid; to have and to hold the ſaid Tenements, with the Appurtenances, to the ſaid *A. B.* and his Aſſigns, from the Day, &c. then laſt paſt, to the full End and Term of Five Years from thence next enſuing, and fully to be compleat and ended; by Virtue of which ſaid Demiſe, he the ſaid *A.* entered into the ſaid Tene-

ments, with the Appurtenances, and was thereof poſſeſſed, until the aforeſaid *C. D.* afterwards (that is to ſay) on the ſame Day, *&c.* in the Year, *&c.* aforeſaid, entered with Force and Arms into the ſaid Tenements with the Appurtenances, in and upon the Poſſeſſion of the ſaid *A.* and ejected, expelled and removed the ſaid *A.* from his ſaid Farm, during his Term aforeſaid not yet expired; and the ſaid *A.* being ſo ejected, expelled and removed, the ſaid *C.* hitherto hath with-held from him, and ſtill doth with-hold the Poſſeſſion thereof; and then and there other Injuries did to him, againſt the Peace of our ſaid Sovereign Lord the King, and to the Damage of the ſaid *A.* Twenty Pounds, and thereupon he brings his Suit, *&c.*

W. Ingram, for the Plaintiff, } Pledges, *&c.*
G. Taylor, for the Defendant. }

A Notice *at the Bottom of the Declaration.*

Mr. T. H.

I Am informed, that you are in Poſſeſſion, or claim Title to the Premiſſes mentioned in this Declaration of Ejectment, or to ſome Part thereof; and I being ſued in this Action as a caſual Ejector, and having no Title to the ſame, do adviſe you to appear next *Hillary* Term, in his Majeſty's Court of *King's Bench* at *Weſtminſter*, by ſome Attorney of that Court, and then and there by a Rule made of the ſame Court, to cauſe your ſelf to be made Defendant in my ſtead, otherwiſe I ſhall ſuffer Judgment to be entered

entered againſt me, and you will be turned out of Poſſeſſion.

Your Loving Friend,
C. D.

Affidavit *of Service of a Declaration in Ejectment.*

In the King's Bench. *A. B.* Plaintiff, and *C. D.* Defendant.

G. *F.* of, *&c.* maketh Oath, that he on the Day of, *&c.* laſt paſt did deliver a True Copy of the Declaration hereunto annexed to *T. H.* Tenant in Poſſeſſion of the Premiſſes in the ſaid Declaration mentioned; and this Deponent further ſaith, that he told the ſaid *T. H.* it was a Declaration in Ejectment, and if he did not appear by ſome Attorney of the Court of *King's Bench*, this preſent *Hillary* Term, there would be Judgment thereupon againſt the Defendant by Default, and he would be turned out of Poſſeſſion.

The common Rule *by Conſent.*

Hillary Term, in the Seventh Year of King *George* the Second.

A. B. *againſt* C. D. *for Two Meſſuages, and Two Gardens,* &c. *(naming the Parcels) in,* &c. *in the County of* S. *by the Demiſe of* E. F.

South'on, ſſ. IT is ordered, with the Conſent of the Attornies for both Parties, that

T. H. be made Defendant inſtead of the now Defendant *C. D.* and that he forthwith appear at the Suit of the Plaintiff, and put in Common Bail, and receive a Declaration in a Plea of Treſpaſs and Ejectment for the Tenements in Queſtion, and without Delay Plead thereunto Not guilty; and that upon the Trial of the Iſſue, he confeſs Leaſe, Entry and actual Ouſter, and inſiſt upon the Title only, otherwiſe Judgment ſhall be entered by the Plaintiff againſt the now Defendant *C.* by Default; and if on the Trial of the ſaid Iſſue, the ſaid *T. H.* ſhall not confeſs Leaſe, Entry and Ouſter, by which the Plaintiff will not be able further to proſecute his Bill againſt the ſaid *C.* then no Coſts or Charges ſhall be awarded upon any ſuch Non-ſuit, but the ſaid *T.* ſhall pay to the Plaintiff the Coſts and Charges thereupon to be taxed: And it is further ordered, that if upon Trial of the ſaid Iſſue, a Verdict ſhould be given for the Defendant, or if it ſhall happen the Plaintiff do not further proſecute his ſaid Bill for any other Cauſe, than for not confeſſing the ſaid Leaſe, Entry and actual Ouſter; that then the Leſſor of the Plaintiff ſhall pay to the ſaid *T.* his Coſts and Charges to be awarded to him in that Behalf.

Both the Attornies ſet their Hands. } *Ingram*, for the Plaintiff, *Taylor*, for the Defendant.

The

The like Rule *by Conſent in* C. B.

IT is ordered by the Court, with the Aſſent of, *&c.* the Plaintiff's Attorney, and, *&c.* the Attorney of *T. H.* who claims the Title in Queſtion, That the ſaid *T. H.* be admitted Defendant, and that he do immediately appear by his Attorney aforeſaid, who is to receive a Declaration and Plead thereto the General Iſſue this Term; and at the Trial thereupon to be had, the ſaid *T.* ſhall appear in his proper Perſon, or by his Counſel or Attorney, and confeſs Leaſe, Entry and actual Ouſter, and Expulſion of ſo much of the Tenements mentioned in the Plaintiff's Declaration, as is in the Poſſeſſion of the ſaid Defendant or his Tenant, or of any other Perſon claiming by or under his Title; or in Default thereof, that Judgment be entered againſt the Defendant *C. D.* the caſual Ejector, but that Proſecution be ſtayed againſt him until he makes Default in any of the Premiſſes: And by Conſent of Counſel it is further ordered, that if by Reaſon of ſuch Default, the Plaintiff ſhall become Nonſuit at the Trial, the ſaid *T.* ſhall take no Advantage thereof, but ſhall pay to the Plaintiff his Coſts, to be taxed by a Prothonotary for the ſame, *&c.*

A Warrant *to the Tenant's Attorney to appear and Plead.*

Mr. *T.*

APpear for me to this Declaration, and make me Defendant in the place of *C. D.* the nominal Defendant, and enter into the common Rule for confeſſing Leaſe, Entry and Ouſter, and thereupon plead Not Guilty; and for your ſo doing this ſhall be your Warrant, and I hereby promiſe to pay you your Fees and Diſburſements.

T. H.

A new Declaration, Plea *and* Iſſue *in Ejectment.*

A. B. Complains of *T. H.* late of, *&c.* in the County of *S.* Yeoman, in the Cuſtody of the Marſhal, *&c.* for that, to wit, That whereas *E. F.* Gentleman, on the Day, *&c.* in the Year of the Reign, *&c.* at *S.* in the County aforeſaid, had demiſed, granted and to farm let to the ſaid *A.* two Meſſuages, and two Gardens, *&c.* with the Appurtenances, ſituate lying and being in the Pariſh, *&c.* in the County of, *&c.* aforeſaid; To have and to hold the ſaid Tenements, with the Appurtenances, to the ſaid *A.* and his Aſſigns, from the Day of, *&c.* then laſt paſt, until the full End and Term of five Years from thence next enſuing, fully to be compleat and ended: By Virtue of which ſaid Demiſe, the ſaid *A.* entered into the

the ſaid Tenements, with the Appurtenances, and was thereof poſſeſſed, until the ſaid *T.* afterwards (that is to ſay) on the ſame, &c. Day and Year, &c. aforeſaid, entered with Force and Arms into the ſaid Tenements, with the Appurtenances, in and upon the Poſſeſſion of the ſaid *A.* and ejected, drove out, and removed the ſaid *A.* from his ſaid Farm, his ſaid Term therein not being yet expired; and the ſaid *A.* being ſo ejected, drove out, and removed, the ſaid *T.* hath hitherto with-held from him, and yet doth with-hold the Poſſeſſion thereof, and other Injuries he then and there did to him; againſt the Peace of our ſaid Lord the King, and to the Damage of the ſaid *A.* Twenty Pounds; and therefore he brings his Suit, &c.

And the ſaid *T. H.* (the new Defendant) by, &c. his Attorney, comes and defends the Force and Injury, &c. and whatſoever, &c. when and where the Court will conſider thereof, and ſaith, that he is no wiſe guilty of the Treſpaſs and Ejectment aforeſaid, ſo as the ſaid *A. B.* hath above againſt him complained; and of this he puts himſelf upon the Country, and the ſaid *A.* doth likewiſe, &c. It is therefore commanded to the Sheriff, that he cauſe to come before our Lord the King at *Weſtminſter*, on *Monday* next after the *Octaves* of the Purification of the Bleſſed *Mary*, (the laſt Return of the ſame Term) twelve honeſt, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. The ſame Day is given to the ſaid Parties there, &c.

A

A Judgment *in Ejectment after Verdict.*

THerefore it is conſidered, that the ſaid *A.* do recover againſt the ſaid *T.* his Term yet to come of and in the ſaid Tenements, with the Appurtenances, and the ſaid Damages aſſeſſed by the ſaid Jury in Form aforeſaid; and alſo Seven Pounds and Ten Shillings for his Expences and Coſts awarded to the ſaid *A.* with his Aſſent, by the Court of the Lord the King here, by way of Increaſe, which ſaid Damages in the whole amount to, *&c.* and be the ſaid *T.* amerced, *&c.*

Entry of Judgment by Default.

AND the ſaid *T. H.* by *G. T.* his Attorney, comes and defends the Force and Injury, *&c.* and hereupon the ſaid *A. B.* prays, that the ſaid *T.* may Anſwer to the ſaid Declaration; and the ſaid *T. H.* ſays nothing thereto in Bar or to ſtop the Action of the ſaid *A.* but makes Default, whereby the ſaid *A.* remains againſt the ſaid *T.* undefended; therefore it is conſidered, that the ſaid *A.* do recover againſt the ſaid *T.* the Poſſeſſion of the ſaid Term yet to come and unexpired of and in the ſaid Tenements, with their Appurtenances, and his Damages occaſioned by the Treſpaſs and Ejectment aforeſaid: But becauſe it is unknown what Damages the ſaid *A.* hath ſuſtained by Reaſon of the Treſpaſs and Ejectment aforeſaid, the Sheriff is commanded, that by the Oath of twelve

twelve honeſt and lawful Men of his Bailiwick, he diligently inquire what Damages the ſaid *A.* hath ſuſtained, as well by Reaſon of the ſaid Treſpaſs and Ejectment, as for his Coſts and Expences laid out by him about his Suit in that Behalf; and that he cauſe the Inquiſition which he ſhall take thereon, to be before our Sovereign Lord the King at *Weſtminſter*, on the Day, *&c.* under his Seal, and the Seals of thoſe by whoſe Oath he ſhall take ſuch Inquiſition; the ſame Day is given to the ſaid *A.* to be here before our ſaid Lord the King: And thereupon the ſaid *A.* prays a Writ of our ſaid Sovereign Lord the King, to be directed to the Sheriff of the ſaid County, to cauſe him to have Poſſeſſion of his ſaid Term of and in the Tenements aforeſaid, with the Appurtenances, yet to come; and it is granted to him returnable here at the Time aforeſaid, *&c.*

A Judgment in Ejectment, on Confeſſion of the Defendant.

AND the ſaid *T. H.* by, *&c.* his Attorney comes and ſaith, That he cannot deny the Action of him the ſaid *A. B.* nor that he the ſaid *T.* is guilty of the Trepaſs and Ejectment aforeſaid, in Manner and Form as the ſaid *A.* hath above againſt him declared; and doth acknowledge the Declaration aforeſaid to be in all Things true: It is therefore conſidered, that the ſaid *A.* ſhall recover againſt the ſaid *T.* his Term of and in the Tenements, with the Appurtenances, aforeſaid yet to come; and his Damages aforeſaid, and alſo Sixty Shillings for

for his Expences and Costs, laid out by him about his Suit in this Behalf, and to the same *A.* by the Court here by his Assent adjudged; which said Damages do in the whole amount to, *&c.* and let the said *T.* be taken. And hereupon the said *A.* doth freely here in Court remit to the said *T.* the Damages, Expences and Costs aforesaid; therefore let the said *T.* be acquitted of those Damages and Costs, *&c.* And thereupon the said *A.* prays a Writ of the Lord the King, for making him to have full Possession of the Tenements aforesaid, with the Appurtenances, and it is granted to him, *&c.* returnable before the Justices of the Court here (of *C. B.*) on the Day, *&c.* and the same Day is given to the said *A.* there, *&c.*

A Writ of Habere Facias Possessionem *on a Recovery in Ejectment.*

GEORGE the Second, *&c.* To the Sheriff of *S.* Greeting: Whereas *A. B.* lately in our Court before us at *Westminster*, by our Writ (if by Original) or (if by Bill) by a Bill without our Writ, and by the Judgment of the same Court, recovered against *T. H.* late of, *&c.* his Term unexpired of and in two Messuages, and two Gardens, *&c.* with the Appurtenances, in the Parish of, *&c.* in your County; which one *E. F.* on the Day of, *&c.* in the Year of our Reign, *&c.* demised to the said *A.* for a Term of Years which is not yet expired, (that is to say) from the Day, *&c.* of the same Month of, *&c.* to the full End and Term of Seven Years, then next following, and fully to be compleat

and ended; by Virtue of which ſaid Demiſe the ſaid *A.* entered into the ſaid Tenements, with the Appurtenances, and was thereof poſſeſſed, until the ſaid *T.* afterwards, (that is to ſay) on the ſame Day of, *&c.* in the ſaid Year, *&c.* of our Reign, with Force and Arms, entered into the ſaid Tenements, with the Appurtenances, in and upon the Poſſeſſion of the ſaid *A.* thereof, and ejected, drove out, and removed the ſaid *A.* from his ſaid Farm, held for the ſaid Term then and yet unexpired, and ſtill doth with-hold the Poſſeſſion of the ſame from the ſaid *A.* whereof the ſaid *T.* is convicted, as appears to us of Record; and foraſmuch as it is adjudged in our ſaid Court before us, that the ſaid *A.* have an Execution upon his ſaid Judgment againſt the ſaid *T.* according to the Force, Form and Effect of the ſaid Recovery: Therefore we command you, that without Delay you cauſe the ſaid *A.* to have his Poſſeſſion of his ſaid Term, of and in the ſaid Tenements above mentioned, with the Appurtenances; and in what Manner you ſhall execute this Precept, do you make appear to us, on the Day, *&c.* wherefoever we ſhall then be in *England*, ſending back to us this our Writ. Witneſs *Philip* Lord *Hardwick*, the Day, *&c.*

Of

Of the Court of Common Pleas, *and the Proceedings and Practice therein.*

THE *Court of Common Pleas* is one of the King's Courts now conſtantly held in *Weſtminſter-Hall*: Of which it is evident from the Regiſter of Writs, King *John*'s Charter, and other Authorities, that this Court was in Being before his Reign; and Sir *Edw. Coke* was of Opinion, that the Court of *Common Pleas* was conſtituted before the Conqueſt, and was not created by *Magna Charta*, at which Time there were *Juſticiarii de Banco, &c.* Pref. 8 Rep.

In the Readings of the learned *Gwyn*, he ſays that upon the Grant of the Great Charter by *Hen.* III. the Court of *Common Pleas* was erected and ſettled in one certain Place, *i. e. Weſtminſter-Hall*; and after that all the Writs ran, *Quod ſit coram Juſticiariis meis apud Weſtm.* whereas before the Party was required by them to appear *Coram me vel Juſticiariis meis*, without any Addition of Time and Place, *&c.* Writs returnable in this Court, are now *coram Juſticiariis noſtris apud Weſtm.* before our Juſtices at *Weſtminſter*; but Writs returnable in *B. R.* are *Coram nobis ubicunque fuerimus, &c.*

There are four Judges of this Court, created by Letters Patent, of whom the Chief is a Lord by his Office, and is called *Dominus Juſticiarius Communium Placitorum, vel Dominus Juſticiarius de Banco*; and the Seal of the Court is

committed to the Cuſtody of the Chief Juſtice. The Lord Chief Juſtice with his Aſſiſtants, hear and determine all *Common Pleas* in Civil Cauſes, as diſtinguiſhed from the King's Pleas: And the Juriſdiction of this Court is general, like that of *B. R.* and extends it ſelf thro'out *England*. It holds Plea of Civil Actions at Common Law, between Subject and Subject, as well Actions Real, as Perſonal and Mix'd; and it ſeems to have been the only Court for all Real Cauſes: But this Court cannot regularly hold Plea in any Action, Real or Perſonal, *&c.* but by Writ out of *Chancery* returnable here; except it be by Bill for or againſt an Officer, or other privileged Perſon of the Court. 4 *Co. Inſt.* 99, 100.

The Court of *C. B.* and *B. R.* in Perſonal and Mixt Actions, have for the moſt part a concurrent Juriſdiction; but the Court of *Common Pleas* hath no Cogniſance of Pleas of the Crown. All Actions belonging to this Court, come hither either by Original, as Arreſts and Outlawries; or by Privilege or Attachment, for or againſt privileged Perſons; or out of inferior Courts, not of Record, by *Pone*, *Recordare*, *Accedas ad Curiam*, Writ of falſe Judgment, *&c.* And Actions Popular, *Decies tantum*, of Champerty, Maintenance, *&c.* are alſo Cognizable by this Court; as are Actions Penal, of Debt, *&c.* upon any Statute. 4 *Inſt.* 118.

And beſides Juriſdiction for Puniſhment of its Officers and Miniſters; the Court of *Common Pleas* may grant Prohibitions to Temporal and Eccleſiaſtical Courts, *&c.* The Attornies of this Court are very many, not being limited to any ſet Number; tho' anciently they were limited,

as appears in 20 *E.* 1. 71. And the Chief Prothonotary swears all Attornies, and other Officers; on which there is a Fee of 20*s.* to the Judge's Box, according to the ancient Rules, and other Fees to the Secondary, Clerk of the Warrants, Crier, *&c.* amounting to about 17*s.* 8*d.* and every Attorney of *C. B.* thus sworn, is to have a Certificate thereof from the Prothonotary, which being delivered to the Clerk of the Warrants, he enters his Name in the Roll of Attornies. The Certificate has been generally made as follows:

De Termino Sancti Hillar. Anno Regni Georgii, &c. nunc Regis Magn. Britann. Septimo.

A. B. Gen. *Jurat. in Cur.* 10 *die Februar. isto eodem Termino.*

G. Cooke.

None are admitted to Plead at the Bar of this Court, or to sign any Special Pleadings, but *Serjeants* at Law.

The *Officers and Clerks of the Common Pleas*, are as follow, *viz.*

The Custos Brevium.

THE *Custos Brevium* is the Chief Clerk in this Court, whose Office is in the King's Gift. He receives and keeps all Writs returnable here, and files them every Return by it self; and he receives from the Prothonotaries all the Records of *Nisi prius* called the *Postea's*, at the End of every Term, *&c.* They are first brought by the Clerks of Assise to the Prothonotary

notary that entered the Iſſue in the Cauſes, who gets the Clerk of the Judgments to enter up Judgment thereon, and then after Time allowed to ſpeak in Arreſt of Judgment, *viz.* four Days after the Return, the Prothonotary enters the Verdict and Judgment in the Rolls of the Court; whereupon he afterwards delivers them over to the *Cuſtos Brevium*, who binds them up into a Bundle, and carries them into the Treaſury of Records. He makes Entry likewiſe of all Writs of Covenant, and the Concords of Fines; and maketh out Exemplifications, and Copies of all Writs and Records in his Office, and of all Fines levied, alſo of the Foot of every Fine filed with him; for after Fines are ingroſs'd, the *Cuſtos Brevium* keeps the Concord and the Foot thereof, and the *Chiroprapher* the Writ of Covenant and the Note of the Fine; and on the Foot of the Fine the Proclamations are indorſed by the Chirographer, when they are all proclaimed.

The Prothonotaries.

THERE are three Prothonotaries of this Court, who in their ſeveral Offices enter all Declarations, Pleadings, Aſſiſes and Judgments, and all other Entries of the *Clerks* and Attornies belonging to each of their Offices, *&c.* They make out all Judicial Writs, *Venire facias's*, *Habeas Corpus's*, Writs of Execution and Seiſin, of Privilege to remove Cauſes from other Courts, *Procedendo's*, *Scire facias's*, Writs of Inquiry of Damages, Proceſs upon Prohibitions, *Audita Querela's*, and falſe Judgments: And

they inrol all Recognizances acknowledged in this Court, (except Recognizances of Bail on Original Writs, which is done by the Filazers) and all common Recoveries; and may make Exemplifications the ſame Term, before the Rolls are delivered out of their Hands.

The Secondaries.

THE Secondaries are Aſſiſtants to the Prothonotaries in the Execution of their Offices; and they take Minutes, and draw up all Orders and Rules of Court. And here are three *Clerks of the Judgments*, one under each Prothonotary.

The Clerk of the Warrants.

THE Clerk of the Warrants enters all Warrants of Attorney for the Plaintiffs and Defendants in Suits; and inrols all Deeds of Indenture of Bargain and Sale, which are acknowledged in Court, or before any Judge out of the Court: And it is his Office to Eſtreat into the *Exchequer* all Iſſues, Fines and Amercements, which grow due to the King in this Court, for which he hath a ſtanding Fee or Allowance from the Crown.

The Clerk of the Eſſoins.

THE Clerk of the Eſſoins keeps the Eſſoin-Roll, which is a Record of the Court; and he enters the Eſſoins, and Exceptions and

Adjournments thereof, and Exemplifies Nonsuits, Essoins, &c. His Fee is 10 *d.* for every Essoin, and 6 *d.* for every Exception to Bar it, for every Rule or Copy of it 4 *d.* and every Nonsuit in Personal Actions 2 *s.* 4 *d.* in Real Actions 4 *s.* 4 *d.* for every Exemplification 7 *s.* 6 *d.* and to his Clerk 3 *s.* This Officer also provides Parchment, and cuts it into Rolls, marking the Numbers thereon; and hath the Delivery out of all the Rolls to every Officer of the Court, for which he has from the several Officers each Term 4 *l.* 9 *s.* about 3 *s.* 4 *d.* from each Officer; and he receives them again when they are written, and makes them up in Bundles or Files every Term; which he usually doth as Servant to the Chief Justice, who is at the Charge of Parchment for all the Rolls, for which he hath an Allowance. And the Clerk of the Essoins hath 3 *s.* 4 *d.* for every Roll brought in after the Bundle is made up, and his Clerk 1 *s.*

The Filazers.

THE Filazers of this Court are Seventeen in Number, among whom the several Counties of *England* are divided; they make out all Mesne Process, as of *Capias*, *Alias*, *Pluries*, &c. between the original Writ and the Declaration; except it be where it is an Attachment, Bill of Privilege, &c. when the Process is wholly made out in the Prothonotary's Office: And where the Defendant is summoned or resummoned, the Filazers issue out Distress Infinite till Appearance. In Personal Actions, when

the Defendants are returned ſummon'd, they make out *Pones* or Attachments; and if a Defendant be returned *Nihil*, then Proceſs of *Capias*, &c. They not only file thoſe Writs, whereon they make out Proceſs; but alſo enter all Appearances and Special Bails, upon any Proceſſes made by them; and they make the firſt *Scire facias* on Special Bails, Writs of *Diſtringas nuper Vic.* and *Superſedeas's* upon the Special Bail when the Defendant appears after a *Capias* awarded. They may alſo enter Imparlances, or general Iſſues, in common Actions, where the Appearance is entered with them, and Judgments by Confeſſion before Iſſue joined, &c. But tho' they enter the Iſſue, the Prothonotary muſt enter the Judgment, if it be after Verdict. In Real Actions, the Filazers of this Court make out all Writs of View, of Grand and Petit *Cape*, &c. and till an Order of Court 14 *Jac.* 1. they made out Writs of Execution, and other Proceſs after Appearance, now done by the Prothonotaries.

The Clerk of the Seal.

THE Clerk of the Seal is an Officer that Seals all Writs Judicial and Miniſterial, and alſo of Meſne Proceſs made by the Filazers; likewiſe Writs of Outlawry and *Superſedeas*, and all Patents and Exemplifications, and takes certain Fees for the ſame, for which he is accountable to the Maſter of this Office, and the Lord Chief Juſtice of the Court.

The

The Exigenters.

THE Exigenters appointed for the ſeveral Counties, of which there are four, make out all Exigents and Proclamations in order to Outlawry; and have for every common Exigent 1 *s.* and for every ordinary Proclamation 6 *d.* but if longer than ordinary, they take according to their Length in Proportion thereto. Theſe Officers alſo made out Writs of *Superſedeas*, upon Exigents iſſued in their Offices; but the iſſuing theſe Writs is taken from them, and given to another Officer conſtituted by Letters Patent by King *James* I.

The Clerk of the Outlawries.

THE Clerk of the Outlawries is Servant to the *Attorney General*, for making out the *Capias Utlagatum* on Return of the Exigent after Outlawry, and the Name of the Attorney General is to be to every one of theſe Writs: And 1 *d.* only is paid for ſealing this Writ, becauſe it is ſuppoſed to be at the King's Suit; whereas 7 *d.* is paid for the Seal of every other Writ.

The Clerk of the Juries.

THE Clerk of the Juries makes out all *Habeas Corpora's Juratorum* for ſummoning Juries to appear for the Trial of Iſſues, either in this Court or at the Aſſizes, after the Panel is

return'd by the Sheriff on the *Ven. fac.* and he enters in his Rolls the Awarding of the ſaid Writs, and makes all the Continuances from the iſſuing of the *Hab. Corpora Jurat.* till the Verdict given.

The Clerk of the Treaſury.

THE Clerk of the Treaſury hath the Charge of keeping the Records of the Court, and makes up and ſeals all Records of *Niſi prius*; he makes all Exemplifications of Records lodged in the Treaſury, and Copies of Iſſues, Imparlances and Judgments, and of all Informations and Recognizances on Record there; and he hath the Fees due for all Searches. He is Servant to the Chief Juſtice, and is ſaid to be removeable at Pleaſure; but all other Officers of this Court are for Life: And there is an *Under-Clerk* of the Treaſury for Aſſiſtance, who hath ſome Fees and Allowances; alſo an *Under-Keeper* that keeps the Key of the Treaſury Door, *&c.*

The Clerk of the Errors.

THE Clerk of the Errors tranſcribes and certifies into the Court of *King's Bench* all Records upon Writs of Error returnable in that Court, where the Cauſe of Error is to be heard and determined: He alſo makes all Writs of *Superſedeas* granted for the Defendant pending a Writ of Error.

The Chirographer.

THE Chirographer is that Officer in the *Common Pleas* which ingrosseth all Fines upon Writs of Covenant, and makes a perpetual Record thereof, after they are examined and have pass'd thro' the other Offices, and writes and delivers the Indentures of them to the Parties: For he makes out two Indentures or Chirographs, one for the Buyer of the Lands, *&c.* and another for the Seller. He likewise makes one other indented Piece, containing the Effect of the Fine, which is called the Foot, and is delivered to the *Custos Brevium*: And he, by himself or his Deputy, proclaims all the Fines in the Court every Term, according to the Statute; and then repairing to the *Custos Brevium*'s Office, he there endorses the Proclamations upon the backside of the Foot of the Fine, and always keeps the Writ of Covenant, *&c.* This Officer hath several Clerks under him, for the respective Counties where the Lands lie.

The Clerk of the King's Silver.

THE Clerk of the King's Silver, enters on Record the Money which the King is to have upon passing of Fines *pro Licentia Concordandi* according to the yearly Value of the Land, as rated on the Writs of Covenant; for which Purpose every Fine is brought to him, when it has gone thro' the Office of the *Custos Brevium.*

Brevium. Alſo he enters, by way of Abſtract, in a Paper-Book, the Subſtance of the Writ of Covenant, according to which all the Fines of every Term are Recorded in the Rolls of the Court.

The Clerk of the Inrolments.

THE Clerk of the Inrolments of Fines and Recoveries, returns all Writs of Covenant upon Fines, as alſo all Writs of Entry, Summons and Seiſin, *&c.* on common Recoveries, which he doth as Deputy upon Record for all the Sheriffs of *England*; and he inrols all Fines and Recoveries, with every Writ belonging thereto, and at the Requeſt of the Party exemplifies the ſame, *&c.* He is appointed by the Judges of the Court, by Virtue of the Statute of 23 *Eliz. c.* 3.

Other Officers.

TO the above Officers may be added a *Proclamator* of the Court, a *Cryer*, and *Tipſtaves*; and the *Warden* of the *Fleet* Priſon, who has under him a *Clerk of the Papers*, to enter Commitments and Diſcharges of Priſoners, deliver out Day-Rules, *&c.*

Of

Of Writs, Appearances thereon, and Bail in C. B.

In profecuting Suits in the *Common Pleas*, firſt Inſtructions are drawn for common or ſpecial Writs, and delivered to the Filazer of the County; and here the *Præcipe* or *Pone* ſerves both for the *Original* and the *Capias*; and if you ſet down the Return of your *Capias*, the Filazer of Courſe takes Care for the Original. If it be an Action of Debt, the *Præcipe* for a Special Writ runs thus:

Somerſet. Command *C. D.* late of *B.* in your County, that he render to *A. B.* Twenty Pounds, which he owes to and unjuſtly detains from him.

Returnable in Fifteen Days
from the Feaſt of *Eaſter*.

T. Vaughan.

On any Specialty, as a Bond, *&c.* or if it be upon an Indenture, you muſt draw your *Præcipe* with the *Alias dict.* as it is literally therein. And when the Action is Bailable, the Plaintiff muſt make an Affidavit of the Debt, being Ten Pounds, or above, according to the Statute 12 *Geo.* 1. Alſo where the Cauſe of Action is Debt, and requires Bail, it has been held the beſt way to take out an *Ac etiam Capias*, the Original to which is only a bare *Clauſum fregit*; and when you come to Judgment thereon,

thereon, you may file a new Original to warrant such Judgment.

But if the *Capias* be Special, by *Præcipe quod Reddat*, &c. and there should be any Mistake either in the Name, *Alias dictus* or Sum, it may be Pleaded in Abatement, and a new Original afterwards will not cure it; but you are obliged to discontinue your Action, paying Costs, and to begin *de novo*: In Case on *Assumpsit*, you may have an *Ac etiam* for 10*l.* or above, and file new Originals as in Debt; tho' you may not in any other Action.

If there are more Defendants than one in the Writ, then in an Original for Debt you are to draw the *Præcipe* double, as follows:

A Præcipe *in Debt against several Defendants.*

Somerset. COmmand *A. B.* late of *W.* in your County, Gent. (otherwise called, &c. if there be an *Alias dict.*) that he render to *E. F.* Twenty Pounds; and command *C. D.* late of the same Place, Gent. that he Render to *E. F.* Thirty Pounds, which they severally owe to and unjustly detain from him.

Capias Returnable on the Morrow of *All Souls.*

T. Vaughan.

Then issues the Writs of *Capias* against either one or two Defendants, as the Case requires, which are in this Form.

A Writ of Capias *in Debt.*

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* To the Sheriff of *S.* Greeting: We command you, that you take *C. D.* late of *B.* in your County, Gent. if he is to be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before our Juſtices at *Weſtminſter*, on the Morrow of *All Souls*, to anſwer to *A. B.* of a Plea, that he render to him Twenty Pounds, which he owes to and unjuſtly detains from him, and have you there this Writ. Witneſs Sir *Robert Eyre*, Knt. at *Weſtminſter*, the Day of, *&c.* in the Seventh Year of our Reign.

Eyre.

A Special Capias *againſt ſeveral Defendants.*

GEorge the Second, *&c.* To the Sheriff of *S.* Greeting: We command you, that you take *A. B.* late of *W.* in your County, Gent. (otherwiſe called, *&c.*) and *C. D.* late of the ſame Place, if they are to be found in your Bailywick, and keep them ſafely, ſo that you have their Bodies before our Juſtices at *Weſtminſter*, on the Morrow, *&c.* to anſwer to *E. F.* of a Plea, that the ſaid *A.* render to him Twenty Pounds, and that the ſaid *C.* render to him Thirty Pounds, which they ſeverally owe to and unjuſtly detain from him; and have you there this

this Writ. Witneſs Sir *Robert Eyre* at *Weſtminſter*, &c.

All *Præcipe's* that he render, &c. are finable, and ſo are the Special *Capias's*; and to avoid the Fine, you may draw a *Pone* for a *Capias* only in Debt, after this Manner.

The Form of a Pone *in Debt.*

Somerſet. IF *A. B.* makes you ſecure in proſecuting his Claim, then put by Pledges and ſufficient Sureties *C. D.* late of *B.* in your County, Gent. to anſwer, &c. (or that broke his Cloſe at *B.*) and alſo in Debt for Twenty Pounds upon Demand, &c.

Returnable in Three Weeks from the Day of St. Michael.

A common Capias *not finable.*

GEORGE the Second, &c. To the Sheriff of *S.* Greeting: We command you, that you take *C. D.* late of *B.* in your County, Gent. and *J. Doe*, if they are to be found in your Bailiwick, and ſafely keep them, ſo that you have their Bodies before our Juſtices at *Weſtminſter*, &c. to anſwer to *A. B.* in an Action, wherefore with Force and Arms they broke the Cloſe of the ſaid *A.* at *B.* aforeſaid, and other Wrongs did to him, to the great Damage of the ſaid *A.* and againſt our Peace; and alſo that the ſaid *C.* may anſwer to the ſame *A.* according to the Cuſtom of our Court of *Common Bench*, in a Plea

of Debt of Twenty Pounds, *&c.* and have you there this Writ. Witneſs, *&c.*

This Writ is in *Treſpaſs*, with an *Acetiam* for the Debt; and if it be *in Caſe*, then the *Acetiam* muſt be thus: And alſo to anſwer to the ſaid *A.* according to the Cuſtom of our Court of *Common Bench*, in a Plea or Action of Treſpaſs on the Caſe, upon Promiſes and Undertakings, to the Damage of the ſaid *A.* Twenty Pounds.

If the *Acetiam* is only againſt one of the Defendants in the Writ, in *Action of the Caſe*, ſay, And alſo that the ſaid *C.* ſhall Anſwer to the the ſaid *A.* according to the Cuſtom, *&c.* in an Action of Treſpaſs on the Caſe, upon Promiſes and Undertakings, to the Damage of the ſaid *A. &c.*

And if it be in *Aſſault* and *Battery*, ſay thus; And alſo to anſwer to the ſaid *A.* according to the Cuſtom of our Court of *Common Bench*, in a Plea of Treſpaſs and Aſſault.

If there are ſeveral *Acetiams* of different Nature againſt two or more Defendants, then ſay; And alſo ſeverally to anſwer *E. F.* according to the Cuſtom of our Court of *Common Bench*, that is to ſay, the ſaid *A. B.* in a certain Action of Treſpaſs on the Caſe, upon Promiſes and Undertakings, to the Damage of the ſaid *E.* Thirty Pounds; and the ſaid *C.* in a certain Plea of Debt for Ten Pounds upon Demand; and have you there, *&c.*

A Special *Capias* in Caſe differs not from a common *Capias*, only in the Recital of the Declaration: It is made out as follows.

A Special Capias *in Case.*

GEorge the Second, &c. To the Sheriff of *B.* Greeting: We command you that you take *C. D.* late of *R.* in your County, if he is to be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before our Juſtices at *Weſtminſter* on the Morrow, &c. to anſwer to *A. B.* of a Plea; That whereas on the Day of, &c. in the Year of our Lord One Thouſand Seven Hundred Thirty-four, the ſaid *C.* was indebted to the ſaid *A.* in the Sum of Twenty Pounds, for the like Sum lent by the ſaid *A.* to the ſaid *C.* at his Special Inſtance and Requeſt; and being ſo indebted, the ſaid *C.* in Conſideration thereof, afterwards, that is to ſay, on the ſaid Day of, &c. in the ſaid Year of our Lord 1734. at *R.* aforeſaid, in your ſaid County, undertook and then and there faithfully promiſed the ſaid *A.* that he the ſaid *C.* would well and truly content and pay the ſaid *A.* the ſaid Twenty Pounds, whenever after the ſaid *C.* ſhould be thereto required: Nevertheleſs the ſaid *C.* not regarding his Promiſe and Undertaking, made in the Manner as above, but contriving and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *A.* in this Particular, hath not paid the ſaid *A.* the ſaid Sum of Twenty Pounds, or in any wiſe made him Satisfaction for the ſame; although the ſaid *C.* on the ſaid Day, &c. in the ſaid Year, and often afterwards at *R.* aforeſaid, was by the ſaid *A.* thereto required; but hitherto altogether hath refuſed, and ſtill doth refuſe to pay the ſame to him, or to make him any Satisfaction therefore, to the Damage of the ſaid *A.* Thirty Pounds, as it is

ſaid: And have you there this Writ. Witneſs Sir *Robert Eyre*, Knt. at *Weſtminſter*, *&c.*

The Form of a Special Original.

GEORGE the Second, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* To the Sheriff of *B.* Greeting: If *A. B.* makes you ſecure in proſecuting his Claim, then put *C. D.* of, *&c.* in your County, Gent. to find Pledges and ſufficient Sureties that he be before our Juſtices at *Weſtminſter*, on the Morrow of *All Souls*, to anſwer the ſaid *A. B.* in an Action, that whereas the ſaid *C.* on the Day of, *&c.* in the Year of our Lord 1734. at *&c.* aforeſaid in your County, was indebted to the ſaid *A.* (and here recite the Declaration to the Words) to the Damage of the ſaid *A. &c.* And have you there the Names of the Pledges, and this Writ. Witneſs our ſelf at *Weſtminſter* the Day of, *&c.* in the Seventh Year of our Reign.

If the Defendant lives in the Country, as for Inſtance in *Somerſetſhire*, and the Cauſe of Action ariſes in *London*, and therefore you would try the Cauſe there; in this Caſe you muſt make out a *Teſtatum* into the County where the Party lives, by which it is ſuggeſted, that a *Capias* had before been taken out in *London*, and that the Sheriffs there made a Return thereto, that the Defendant was not to be found in their Baliwick, *&c.* And when the Defendant is taken, he is to put in Bail with the Filazer of *London*, to anſwer to the Plaintiff upon the Writ made out there.

Form of a Teſtatum *Capias.*

GEORGE the Second, *&c.* To the Sheriff of *S.* Greeting: Whereas we lately commanded our Sheriff of *L.* that he ſhould take *C. D. &c.* to anſwer to *A. B.* of a Plea, why with Force and Arms the Cloſe of the ſaid *A.* he broke at, *&c.* and did other Wrongs to him, againſt our Peace, *&c.* And alſo to anſwer the ſame *A. &c.* (going quite through the *Acetiam*) to the Damage of the ſaid *A.* Twenty Pounds; and whereof our ſaid Sheriff of *L.* hath made a Return to our Juſtices at *Weſtminſter*, at a certain Day now paſt, that the ſaid *C.* is not to be found in his Bailiwick; whereas it is teſtified in our ſame Court, that the ſaid *C.* lurks and wanders up and down in your County, *&c.* And have you there this Writ. Witneſs, *&c.*

If a Defendant be within a Liberty, which the Sheriff cannot enter upon a *Capias*, you may get the Filazer of the County to make out a Writ *Non omittas* directed to ſuch Liberty where the Defendant reſides, without having a *Capias* firſt from him; and the Method for Expedition's ſake now is to make the *Non omittas* at once, ſuggeſting this Matter as if it had been done; ſo the *Capias* and Writ of *Non omittas* are made out at the ſame Time, and you return the *Capias* your ſelf.

A Non omittas *on a* Capias.

GEORGE the Second, by the Grace of God, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* To the Sheriff of *S.* Greeting. We command you, that you omit not, by Reaſon of the Liberty of, *&c.* in your County, but that you enter therein, and take *C. D.* late of, *&c.* in the County, *&c.* if he be to be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before our Juſtices at *Weſtminſter*, on the Morrow of all Souls, to anſwer *A. B.* of a Plea, wherefore with Force and Arms he broke the Cloſe of the ſaid *A.* at, *&c.* and did other Wrongs to the ſaid *A.* to his great Damage, and againſt our Peace; and alſo to anſwer to the ſaid *A. B.* according to the Cuſtom of our Court of Common Bench, in a Plea of Treſpaſs on the Caſe, for Promiſes and Undertakings unperformed by the ſaid *C.* to the Damage of the ſaid *A.* Thirty Pounds; And in as much as you have made a Return to our Juſtices at *Weſtminſter*, at a certain Day now paſt, that the Bailiff of the ſaid Liberty (to whom by Virtue of our Writ to you directed, you had by your Mandate commanded that he ſhould take the ſaid *C.*) had given you no Anſwer thereto; and have you there this Writ. Witneſs Sir *Robert Eyre*, Knt. at *Weſtminſter*, *&c.*

By the Orders of the Court, Sheriffs are to have their Deputies in Court, to return and receive Writs; who are to appear in the Term, *&c.* And Sheriffs ſhall duly return and execute

Writs and Proceſs, and take ſufficient Security for Appearance of Perſons arreſted, before they are ſet at Liberty: Alſo Sheriffs, &c. not returning Writs within Six Days after a Rule ſerved for it, ſhall pay Coſts. *Mich.* 1654. *Hill.* 16 *Car.* 2. 8 *Geo.* 1.

Appearances upon Writs in the Common Pleas muſt be entered with the Filazer, or the Defendant ſhall forfeit 5 *l.* But on Writs of Privilege, both common Appearances and ſpecial Bail are entered upon the Prothonotaries Remembrance

It is ordered by the Rules of this Court, that Appearances ſhall be duly entered; and Attornies undertaking Appearances are liable to an Attachment, or to be put out of the Roll, if they do not appear. Attornies within four Days after Appearance-Day on Writs in *London* and *Middleſex*; and within Eight Days after Appearance-Day on Writs in the Country, are to enter their Appearances, or be ſubject to Attachment and Coſts: And the Defendants to plead as if they had been duly entered, &c. *Mich.* 1654. *Hill.* 6 *Geo.* 1.

If the Cauſe of Action ſhall be under 10 *l.* (on Writs out of this, or any other Superior Court) and the Plaintiff ſhall proceed by way of Proceſs againſt the Defendant, if ſuch Defendant do not appear at the Return of the Proceſs, or in Four Days after, it ſhall be lawful for the Plaintiff, upon Affidavit being made and filed in the proper Court, of the perſonal Service of ſuch Proceſs, to enter a common Appearance for the Defendant, and to proceed thereon, &c. And there is to be a Notice on ſuch Proceſs, for the Defendant to appear at the Return, &c. and a Defendant not appearing

then, or within Eight Days after it, Affidavit of the Service of the Proceſs to be made before any Judge or Commiſſioner of the Court, or the Officer for entering Appearances. *Stat.* 12 *Geo.* 1. and 5 *Geo.* 2.

Before theſe Statutes, if the Defendant moved that a common Appearance might be taken, where Bail was inſiſted upon, the Court would order the Plaintiff to ſhew his Cauſe of Action by Affidavit, wherein Oath was to be made that 10 *l.* was due, to juſtify the inſiſting upon Special Bail: And when a *Capias* required Bail, that by Law ſhould not, the Defendant on making Affidavit that he did not owe 10 *l.* to the Plaintiff, and moving the Court, ſhould be ordered to give a common Appearance; and this might be alſo done at a Judge's Chamber. Now the Plaintiff muſt make Oath of his Debt, or Cauſe of Action, when 10 *l.* or above, before the Iſſuing of the Writ, and the Sum ſworn muſt be indorſed thereon; for which Sum and no more, Bail is to be taken. 12 *Geo.* 1. *c.* 29.

In Actions of Debt, *&c.* it has been obſerved, that the Reaſon of *Bail* is upon a Suppoſition of Law, that the Defendant flies the Judgment of the Law; which is grounded upon his not appearing at firſt, *&c.* and where a Man is taken on a *Capias*, he ſhall not be diſcharged till he give Bond to appear; except the Plaintiff or his Attorney conſent to an Appearance without Bail.

On a *Habeas Corpus*, or *Cepi Corpus*, where Special Bail is required, the Bail is not to be taken without Conſent of the Plaintiff; and upon Writs of *Habeas Corpus* directed to the Courts of *London* and *Weſtminſter*, *&c.* which are returnable *immediate*, the Defendant may be

bailed, giving Notice of the Names of the Bail, and before what Judge he intends to put it in; but it muſt be in Eight Days, and Exception is to be taken within Twenty Days after Notice. *Ord. C. B. Mich.* 1654.

The Defendant's Attorney who puts in Bail to any *Capias ad Reſpondend. &c.* ſhall have recourſe to the proper Filazer of the County in whoſe Office the Bail ought to be entered, and ſhall with him or his Clerk come into Court, or attend one of the Judges, to take the ſame: And where any Bail is taken on the Filazer's Writ, without the proper Filazer, it is no Bail, *Ord. Trin.* 1 *W. & M.*

If ſpecial Bail put in by the Defendant in any Suit, be excepted to, the Defendant ſhall perfect his Bail within four Days after Exception taken; in Default whereof, the Plaintiff may proceed upon the Bail-Bond: And in all Caſes where Bail ſhall be filed on Writs of Error, ſuch Bail ſhall likewiſe be perfected within the like Time; or in Default thereof, the Clerk of the Errors of this Court ſhall *Non-pras* ſuch Writ of Error. In Caſes wherein Bail-Bonds ſhall be taken by Sheriffs, if the ſame Bail be put in above, the Plaintiff may except againſt ſuch Bail; and it ſhall not ſtand good and abſolute. *Ord. Cur. Trin.* 3 *&* 4 *Geo.* 2. *Mich.* 6 *Geo.* 2.

No Attorney of *C. B.* or any other Court, or any Perſon practiſing as ſuch, ſhall be Bail in any Suit or Action depending in this Court: And there having been many Inconveniences in Cauſes, by Reaſon that Sheriffs Officers, Bailiffs, and other Perſons concerned in the Execution of Proceſs, have offered themſelves and been allowed to be Bail; it is ordered, that no Sheriff's

riff's Officer, Bailiff, or other Person concerned in the Execution of Writs, shall be permitted or suffered to become Bail in any Action brought in this Court. *Ord. Mich.* 6 *Geo.* 2.

Where Bail-Bonds are taken in *London* and *Middlesex*, they shall not be put in Suit till four Days after the Appearance-Day of Return of Writs; nor in any other County, till after Eight Days. *Hill.* 9 *Ann.* If the Defendant puts not in Bail when required, the Plaintiff is to get the Sheriff to assign over his Bail-Bond, and take out a *Capias* upon it; (directed to the Coroner, if the same Sheriff be an Officer) but that Writ 'tis said requires only an Appearance: And if the Plaintiff be nonsuited, and then commences a new Action for the same Cause, he shall not have Special Bail in the New Action, tho' he might have insisted upon it in the First.

In putting in Bail in *C. B.* before a Judge, when the Action is laid in *London* or *Middlesex*, you must do it within four Days after the Return of the Writ, otherwise the Bail-Bond may be assigned; and if it be at the Suit of a common Person, the Filazer, or his Clerk, attends the Judge with you; but if it be at the Suit of a privileged Person, the Prothonotary's Clerk is to go with you: And if it be taken by Commissioners, you carry it with an Affidavit of its being so taken to a Judge to allow it, and thence to the Filazer of the County who keeps it. Bail is to be justified only in Court, and the Filazer of the County in such Cases is to bring his Book along with him, for which he is paid 3 *s.* 6 *d.* Fee.

The Method to put in Bail in the Common Pleas in *London* or *Middlesex*, is not by filing a

Bail-piece, but it is done by an Entry in the Filazer's Book; tho' the Filazers vary a little in the Manner thereof: In *London* it is thus:

London. On a *Capias* againſt *C. D.* late of *London*, Hoſier, at the Suit of *A. B.* returnable on the Octave of St. *Hillary*, the Bail are,

E. F. of *Breadſtreet*, *London*, Turner,
and
G. H. of *Friday-ſtreet*, *London*, Packer.

The Defendant becomes bound for himſelf in One Hundred Pounds.
Each of the Bail in Fifty Pounds.

W. Herne, Attorney for the Defendant.

Taken and acknowledged (to be perfected hereafter) the 16th Day of *January* 1735, before

J. Comyns.

Here you call upon the Filazer, and give him Notice when the Bail are ready, and then he will attend with you at the Judge's Chamber, and there the Bail enter into a Recognizance, all the Note or Entry made whereof is generally the before mentioned in the Filazer's Book: But if *Nul tiel Record* be pleaded in an Action of *Debt*, or to a *Scire facias* on that Recognizance; then the Filazer draws up a Form of the Entry of the Recognizance, which you make Uſe of to verify the Record; and the Condition of the ſaid Recognizance is to this Effect.

Form

Form of the Condition *of a* Recognizance *of Bail.*

YOU (naming the Defendant, if preſent) do acknowledge to owe unto the Plaintiff Twenty Pounds, and you (naming the Bail) do ſeverally acknowledge to owe unto the ſame Perſon, the Sum of Ten Pounds a-piece, to be levied upon your ſeveral Goods and Chattels, Lands and Tenements, upon Condition that if the Defendant be condemned in the ſaid Suit or Action, he ſhall pay the Condemnation Money, or render himſelf a Priſoner into the *Fleet* for the ſame; and if he fail ſo to do, you (naming the Bail) do undertake to do it for him.

If you have Occaſion to enter a Recognizance of Bail in Caſe, the Manner of doing it is as follows.

The Form of an Entry *of a Bail Recognizance.*

Middleſex. THE Sheriff was commanded that he ſhould take *C. D.* late of *Weſtminſter* in his County, if he could be found in his Bailiwick, and that he ſhould have kept him ſafely, ſo that he might have had his Body before, *&c.* at this Day, that is to ſay, on the Morrow of all Souls, to anſwer to *A. B.* of an Action, wherefore he broke the Cloſe of the ſaid *A.* with Force and Arms, and did other Wrongs to the ſaid *A.* to his great Damage, and againſt

againſt the Peace of our Sovereign Lord the King; and alſo in a Plea of Treſpaſs upon the Caſe, on Promiſſes unperform'd, to the Damage of the ſaid *A.* Twenty Pounds. And now at this Day, *E. F.* of St. *Martin's Lane* in the ſaid County, Gent. and *G. H.* of St. *James's Street* in the ſaid County, Grocer, came perſonally before Sir *R. E.* Knight, and his Companions Juſtices of this Court of Common Bench; and they and each of them acknowledged themſelves to owe to the ſaid *A.* the Sum of Twenty Pounds, which ſaid Sum they the ſaid *E.* and *G.* and each of them did will and grant, for them and their Heirs, to be made and levied of their, and each of their Lands and Chattels, to the Uſe and Behoof of the ſaid *A.* And alſo at the ſame Day, the ſaid *C.* came perſonally before the ſame Juſtices, and acknowledge to owe to the ſaid *A.* the Sum of Forty Pounds; which ſaid Sum of Forty Pounds the ſaid *C.* for himſelf and his Heirs, willed and granted for him and his Heirs, to be made and levied of his Lands and Chattels to the Uſe and Behoof of the ſaid *A.* ſubject to this Condition, that if Judgment ſhould happen to be given in the ſame Court here, for the ſaid *A.* againſt the ſaid *C.* in the ſaid Plea of Treſpaſs upon the Caſe; then the ſaid *C.* ſhould make Satisfaction to the ſaid *A.* for all ſuch Damages which ſhould be awarded to the ſaid *A.* in the ſame Court here againſt the ſaid *C.* or ſhould render his Body, in Execution of the ſaid Judgment, to the Priſon of the Fleet, *&c.*

In taking Bail to Actions, depending in the Court of Common Pleas, before *Commiſſioners* in the Country; firſt a Copy of the Writ on Parch-

Parchment, is to be brought to the Commiſſioner taking it, on which the Recognizance or Bail-piece muſt be Drawn and Ingroſſed, and then the Bail is taken before ſuch Commiſſioner; And the Affidavit of the due Taking of every ſuch Bail ſhall be made either before ſome Judge of *C. B.* to whom the Bail ſhall be tranſmitted, or before ſome Perſon who ſhall have Power to take Affidavits in Matters and Cauſes depending in this Court.

All Bails taken by any Commiſſioner within the Diſtance of Forty Miles from the Cities of *London* and *Weſtminſter* are to be tranſmitted to the Lord Chief Juſtice of the Court of Common Pleas, or to one of the Juſtices of the ſaid Court, within Ten Days after the Taking thereof; and all Bails taken by any Commiſſioner above the Diſtance of Forty Miles from *London* and *Weſtminſter*, ſhall be tranſmitted within Twenty Days after the Taking, unleſs all the ſaid Juſtices ſhall be in their Circuits, and then as ſoon as any one of them ſhall be returned to *London* out of his Circuit.

And every Commiſſioner ſhall keep a Book purpoſely for entering exactly the Names of the Defendant and his Bail, and the Name of the Plaintiff, as it is in the Bail-piece, and of the Time of the Taking thereof, with the Name of him by whom ſuch Bail ſhall be tranſmitted: Alſo the Plaintiff's Attorney ſhall be at Liberty to repair to the Commiſſioner's Book for the Names of the Bail, that he may enquire of the Sufficiency of them; and if they are found Inſufficient, they may be excepted againſt within Twenty Days after the ſaid Bail is tranſmitted, and Notice given of the Taking thereof to the

Plain-

Plaintiff or his Attorney. And in that Caſe the Defendant muſt either put in better Bail, or the Cogniſors of ſuch Bail muſt juſtify themſelves in open Court, either by Affidavit taken before ſuch Commiſſioner that took the ſaid Bail, or by Oath made in Court, or before one of the Judges of the ſaid Court. *Ord. Cur. Paſch. 5 W. & M.*

Alſo all Bail-pieces, ſo taken and tranſmitted within the Times limited, ſhall be forthwith delivered to and filed with the proper Officer, to be entered upon Record, or it ſhall be as no Bail; and the Plaintiff may proceed on the Sheriff's Bail-Bond, as if no ſuch Bail were ever put in, *&c.* And Defendants Attornies neglecting to file ſuch Bails in due Time, they ſhall not be afterwards received or filed, without Leave of this Court firſt had and obtained. *Ord. Hill.* 6 *Geo.* 1. *Mich.* 6 *Geo.* 2.

By Virtue of the firſt mentioned *Order*, if the Defendant be not preſent when the Bail is taken, then the Bail are uſually bound in double the Sum in the Writ of Arreſt; otherwiſe only ſingle; and the Bail-piece taken by the Commiſſioners, is to be of this, or the like Form, as the Caſe ſhall be, *viz.*

A

A Bail-Piece *taken before Commiſſioners.*

W. Herne Attorney for the Defendant. } THE Manucaptors of the Defendant are *John Denn*, of the Pariſh of, *&c.* in the County of *B.* Gent. and *Richard Fenn* of the ſame Place, Gent.

The Party himſelf in Twenty Pounds.
Each of the Manucaptors in Ten Pounds.

Taken and acknowledged the Day of, *&c.* in the Year of our Lord 1734. (to be perfected hereafter)
Before me
A. B. A Commiſſioner.

And the *Condition* of the *Recognizance* ſhall be *as before*; that the Defendant and his Bail owe to the Plaintiff ſo much, to be levied on their ſeveral Goods, *&c.* on Condition, if the Defendant is condemned in the Action, he ſhall pay the Condemnation; or render himſelf to Priſon, *&c.*

Of Declarations, and Pleadings, &c. in C. B.

THE Plaintiff in any Action before the End of the next Term, after Return of Proceſs ought to declare againſt the Defendant; but it is now uſual for the Plaintiff, after the Return of the Writ,

Writ, to have Two Terms to make out his Declaration: And if the Plaintiff doth not declare within that Time, the Defendant upon a Rule given may ſign a *Non Prof.* and have Coſts uſually 1 *l.* 6 *s.* 8. for Recovery whereof Execution may be taken out, or Action brought.

If the Defendant appear the Firſt Term, and give no Rule to declare, his Attorney the Second Term may be compelled to accept of a Declaration with Imparlance: But if the Plaintiff declare not the Second Term, tho' the Defendant give no Rule the Plaintiff may be Nonſuited at the End of the Second Term, upon a Continuance enter'd by *Dies Datus.* If the Day to appear, be upon the firſt Return of any *Hilary* or *Trinity* Term, no Imparlance will be granted, without Conſent or Rule of Court: And after Rules to Declare are out, no Nonſuit ſhall be had for Want of a Declaration, unleſs the Plaintiff's Attorney be firſt called on for his Declaration. *Ord. Mich.* 1654.

In Cauſes where a Copy of the Proceſs of this Court is ſerved upon any Defendant, and an Appearance entered for ſuch Defendant by the Plaintiff's Attorney, purſuant to the Act 12 *Geo.* 1. the Plaintiff's Attorney in ſuch Caſe, ſhall leave a Copy of the Declaration in the Office, and likewiſe give Notice thereof to the Defendant in Writing, or leave the ſame at his laſt or moſt uſual Place of Abode; ſignifying the Nature of the Action, at whoſe Suit it is proſecuted, and in whoſe Office ſuch Declaration is left: And in Caſe of Special Writs, returnable the firſt Returns of *Hillary* and *Trinity* Terms, and the Firſt and Second Returns in *Eaſter* and *Michaelmas* Terms, the Defendants are to Plead

to the Action within Four Days after the Appearance-Day of the Return of such Writs; and if it be a common *Capias*, or any other Special Writ not returnable as aforesaid, within the First Four Days of the next Term, or Judgment will be entered against such Defendant by Default. And from the Time of giving such Notice as aforesaid, such Declaration shall be deemed well delivered to the Defendant; and then he must plead, on a Rule given, *&c. Ord. Car. Mich.* 1 *Geo.* 2.

Declarations to be delivered, with Notice to Plead in four Days in *London* or *Middlesex*; and in other Counties, above Twenty Miles off, within Eight Days, *&c.* Vide *Pleas.*

If a Declaration be delivered with Blanks, for only Matter of Form, as Time, Place, or Name, the Defendant's Attorney must call on the Plaintiff's Attorney to fill them up; and if it be not done in a reasonable Time, the Attorney for the Defendant may Demur thereto, but not without such calling for. And where a Mistake is committed in Drawing the Declaration, and the Plaintiff gives Notice of it before the *Essoin-Day*, he may amend the same, and the Defendant shall not take any Advantage thereof; and on Affidavit of such Notice, no Plea in Abatement shall avail, to have Costs, but the Defendant shall Plead in Chief: And if there be no Notice given, and the Defendant hath either pleaded in Abatement or Demurred, the Plaintiff before Joinder in Demurrer, or joining in Issue, may amend his Declaration, on paying Costs, *&c. Vide Stat.* 4 *Geo.* 2. *c.* 26.

Against *Prisoners* committed to the *Fleet* by *Habeas Corpus* in *Hilary* Term, the Plaintiff is

to

to bring the Prisoner to the Bar, and declare against him within Six Days after *Trinity* Term begun; on a Commitment in *Easter* Term, or the Vacation following, you must declare within Six Days after *Michaelmas* Term begun; in *Trinity* Term, before the End of *Michaelmas* Term; in *Michaelmas* Term, within Six Days after *Easter* Term begun, or the Defendant may be discharged by *Supersedeas*. *Ord. Hill.* 14 & 15 *Car.* 2.

In Country Gaols Declarations are not to be delivered to Prisoners 'till after the Process be returnable; Affidavit is to be made of the Delivery, and if, where a Copy of the Declaration is delivered before *Mensem Paschæ*, or *Craſtinum animarum*, the Defendant doth not enter his Appearance within ten Day after *Easter* or *Michaelmas* Term, &c. Judgment may be entered: And so it is where Rules are given to appear and plead, when they are not. But if the Declaration be not entered, or left in the Office at the End of the next Term, before the End of Twenty Days after such Term, the Prisoner shall be discharged on entering his Appearance. *Ord. Pasch.* 5 *W.* & *M.*

If any Plaintiff shall Declare against any Person in Custody of the Warden of the *Fleet*, or of any Sheriff, &c. and do not further proceed to Judgment within three Terms after the Declaration delivered, inclusive of the Term wherein deliver'd; or if a Plaintiff having obtained Judgment in this Court against any Prisoner, shall not charge him in Execution thereupon within Two Terms next after the Judgment had, including the Term in which the said Judgment shall be signed; the Defendant in Prison

may be discharged out of Custody by *Supersedeas* allowed by one of the Justices of this Court, if Cause be not shewn by the Plaintiff why he had not proceeded, upon Notice given by the Defendant's Attorney, and Oath made thereof, &c. *Ord. Cur. Pasch.* 8 *Geo.* 1.

A Declaration in Action of Debt *upon a Bond.*

Somerset, ss. A. B. late of *W.* in the County aforesaid Gentleman, otherwise called *A. B.* of *W.* in the County of *S.* Gentleman, was summoned to Answer to *C. D.* of a Plea, or in an Action, that he render to him Fifty Pounds of lawful Money of *Great Britain*, which he owes to and unjustly detains from him, &c. And whereupon the said *C.* by *T. V.* his Attorney complains, that whereas on the Sixth Day of *June* in the Year of our Lord 1733, at *B.* in the said County, the said *A.* by his Writing Obligatory (commonly called a Bond) suffered himself to be bound to the said *C.* in the said Sum of Fifty Pounds, to be paid to the said *C.* whenever after the said *A.* should be thereto required: Nevertheless the said *A.* altho' often required, hath not paid to the said *C.* the said Sum of Fifty Pounds, or any Part thereof; but hitherto hath altogether refused, and still doth refuse to pay the same to him, to the Damage of the said *C.* Twenty Pounds; and thereupon he brings his Suit, and hath good Proof of the Premisses when the Court will consider thereof: And he brings into this Court the said Writing Obligatory, which

teſtifies the ſaid Debt, the Date whereof is the ſame Day and Year above-mentioned.

A Declaration in Debt, *for Money to be paid on Day of Marriage or Death.*

Dorſet, ſſ. A. B. late of *B.* in the County of *D.* Gentleman, was ſummoned to Anſwer to *C. D.* of a Plea that he render to him Twenty Pounds, which he owes to and unjuſtly detains from him; and whereupon the ſaid *C.* by *W. H.* his Attorney complains, that whereas the ſaid *A.* on the Thirteenth Day of *March* in the Seventh Year of the Reign of the Lord the now King, at *B.* aforeſaid, had bought of the ſaid *C.* one Bay Horſe, of the Age of, *&c.* for the aforeſaid Twenty Pounds, to be paid to the ſaid *C.* on the Day of Marriage of the ſaid *A.* or at the Hour of Death of the ſame *A.* which ſhould firſt happen; and the ſaid *C.* in Fact ſays, that the ſaid *A.* afterwards, that is to ſay, on the Third Day of *September* in the Year of the Reign, *&c.* at *B.* aforeſaid, hath married one *E. F.* the Daughter of *T. F.* whereby an Action hath accrued to the ſaid *C.* to have and demand of the ſaid *A.* the aforeſaid Twenty Pounds: Nevertheleſs the ſaid *A.* tho' often required thereto, hath not rendered to the ſaid *C.* the ſaid Twenty Pounds, but hath hitherto denied, and ſtill doth deny to render that to him; whereupon he ſays that he is injured and hath Damage to the Value of, *&c.* and thereupon he brings his Suit, and hath good Proof of the Premiſſes when the Court will conſider thereof.

A

A Declaration in Caſe *for Money promiſed on Marriage.*

Wilts, ſſ. A. B. late of, *&c.* in the County of *W.* Eſq; was attached to Anſwer to *C. D.* of a Plea of Treſpaſs upon the Caſe, *&c.* And whereupon the ſaid *C.* by, *&c.* his Attorney complains, that whereas the ſaid *A.* at, *&c.* aforeſaid, on the Day of, *&c.* in the Year of our Lord One Thouſand ſeven Hundred and Thirty-four, in Conſideration that the ſaid *C.* then and there being ſingle, at the Special Inſtance and Requeſt of the ſaid *A.* would marry *S. B.* Daughter of him the ſaid *A.* aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *C.* that he the ſaid *A.* would give to the ſaid *C.* Five Hundred Pounds; and the ſaid *C.* avers, that he believing the ſaid Promiſe and Aſſumption of the ſaid *A.* afterwards, that is to ſay, on the Day of, *&c.* in the Year of our Lord, *&c.* at *D.* aforeſaid, took to Wife the aforeſaid *S.* and a Marriage between him the ſaid *C.* and the ſaid *S.* was then and there in due Manner had and ſolemnized, according to the Rites and Ceremonies of the Church of *England*: Nevertheleſs the ſaid *A.* little regarding his Promiſe and Aſſumption aforeſaid, but contriving and fraudulently intending the ſaid *C.* in this Behalf, craftily and ſubtilly to deceive and defraud, hath not paid or any way ſatisfied the ſaid Five Hundred Pounds, or any Part thereof, to the ſaid *C.* (altho' by him the ſaid *C.* on the Day, *&c.* in the Year laſt aboveſaid, and often afterwards,

he was requeſted ſo to do) but hath hitherto altogether refuſed, and ſtill doth refuſe to pay the ſame to him; to the Damage of the ſaid *C.* One Thouſand Pounds; and thereupon he brings his Suit, *&c.*

A Declaration in Caſe *on a* Mutuatus *for Money lent.*

South'ton, ſſ. A. B. late of, *&c.* was attached to Anſwer *C. D.* of a Plea of Treſpaſs upon the Caſe, *&c.* and whereupon the ſaid *C.* by *W. H.* his Attorney complains, that whereas the ſaid *A.* the Day of, *&c.* in the Seventh Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. at *R.* in the County of *S.* aforeſaid, in Conſideration that the ſaid *C.* at the Special Inſtance and Requeſt of the ſaid *A.* had lent and advanced to the ſaid *A.* Ten Pounds of lawful Money of *Great Britain*, he aſſumed upon himſelf, and to the ſaid *C.* then and there faithfully promiſed, that he the ſaid *A.* the ſaid Ten Pounds to the ſame *C.* when he ſhould be thereto afterwards required, would well and faithfully pay and content: Nevertheleſs the ſaid *A.* his Promiſe and Aſſumption aforeſaid little regarding, but contriving and fraudulently intending the ſaid *C.* in this Behalf, craftily and ſubtilly to deceive and defraud, the ſaid Ten Pounds, or any Part thereof, to the ſaid *C.* (tho' to do this the ſaid *A.* afterwards the ſame Day, Year and Place aforeſaid, and often ſince, by the ſaid *C.* hath been required) hath not paid; but that to him hath altogether refuſed, and ſtill doth refuſe

fuse to pay, to the Damage of him the said *C.* Twenty Pounds; and thereupon he brings his Suit, *&c.*

A Declaration for Money due on Account.

Somerset, *ss.* A. B. late of, *&c.* was summoned to Answer *C. D.* of a Plea, that he render to him Thirty Pounds, which he owes to him, and unjustly detains, *&c.* and whereupon the said *C.* by, *&c.* his Attorney complains, that whereas the said *A.* the Day and Year, *&c.* at *T.* in the County aforesaid, had accounted with the said *C.* for several Sums of Money to the said *C.* by the said *A.* before that Time due and payable; and upon that Account, the said *A.* was found in Arrear towards the said *C.* in Seventy Pounds, by which an Action accrued to the said *C.* to recover and have of the said *A.* the said Seventy Pounds: Nevertheless the said *A.* altho' often required, hath not rendered to the said *C.* the said Seventy Pounds, but hitherto hath refused, *&c.* whereupon he saith, that he is the worse, and hath Damage to the Value of Ten Pounds; and thereupon he brings his Suit, *&c.*

A Declaration against the Hundred, on a Robbery *committed upon the Highway.*

Wilts, *ss.* THE Inhabitants in the Hundred of *C.* in the County aforesaid, were attached to Answer, as well the Lord the now King, as *A. B.* of a Plea of Trespass and

Contempt against the Statute of Hue and Cry, &c. And whereupon the said *A.* who as well for the Lord the King, as for himself in this Behalf, prosecutes by *W. H.* his Attorney, complains, that whereas certain Malefactors, that is to say, two Men to the said *A.* unknown, the Day of, &c. in the Seventh Year of the Reign of the said Lord the now King, at the Parish of *B.* in the County aforesaid, in the King's Highway there, within the Hundred of *C.* aforesaid, with Force and Arms, to wit, Swords, Staves and Knives, &c. on him the said *A.* made an Assault, and Thirty Pounds of lawful Money of this Kingdom, in counted Money, and Ten Pieces of Money called Moidores, the Value of each of which is Twenty-seven Shillings of like lawful Money, and one Silver Watch and Silver Hilted Sword of the Value of, &c. of like lawful Money, of the proper Monies, Goods and Chattels of the said *A.* then and there belonging to him the said *A.* feloniously took, spoiled and carried away, against the Peace of the said Lord the King; and the said *A.* immediately after the Felony, Robbery and Spoil committed at the Town of *B.* in the County aforesaid, within the Hundred of *C.* aforesaid, near the Place where the said Robbery and Spoil was done, Hue and Cry of the Robbery and Spoil aforesaid made, and then and there Notice and Intelligence to the Inhabitants of the said Town of *B.* gave of the said Robbery and Spoil; and after the said Robbery and Spoil committed, and within Twenty Days next before the bringing the Original Writ of the said *A.* that is to say, the Day, &c. in the said Seventh Year of the Reign of the Lord

the

the now King, the ſaid *A.* before *E. S.* Eſq; then one of the Juſtices of the ſaid Lord the now King, aſſigned to keep the Peace of the ſaid Lord the now King in the County aforeſaid, and then inhabiting in the Town of *B.* aforeſaid, was there examined on his Corporal Oath, according to the Statute at *Weſtminſter* in the County of *Middleſex*, in the Twenty-ſeventh Year of the Reign of the Lady *Elizabeth* Queen of *England* thereof made and provided: And the ſaid *A.* upon his Oath aforeſaid then ſaid, that he did not know the Parties who committed the ſaid Robbery, nor either of them; and after the ſaid Robbery committed, and before the Day of bringing the original Writ aforeſaid, that is to ſay, the Day of, *&c.* in the Seventh Year of the Reign of the ſaid Lord the King aboveſaid, Forty Days were elapſed and expired: Nevertheleſs the ſaid Inhabitants in the Hundred aforeſaid, the Statutes in that Caſe made and provided, not in the leaſt regarding, nor the Penalty in the ſame contained, Amends of the Robbery aforeſaid to the ſaid *A.* hitherto have not made, nor the Bodies of the Perſons and Malefactors aforeſaid, or the Body of either of them have taken; neither have they hitherto anſwered for the Bodies of them, or the Body of either of them; but the ſaid Malefactors they ſuffered to Eſcape, in Contempt of the ſaid Lord the now King, and to the great Damage of the ſaid *A.* and againſt the Form of the Statute in the like Caſe thereof made and provided; whereupon the ſaid *A.* who as well for the ſaid Lord the King, as for himſelf in this Behalf proſecutes, ſays that he is the worſe, and damaged to the Value of

Sixty Pounds; and therefore as well for the ſaid Lord the King as for himſelf, he brings this Suit, *&c.* *

A Declaration in Caſe *for throwing down Incloſures.*

Berks, ſſ. A. B. late of, *&c.* in the County aforeſaid, was attached to Anſwer to *C. D.* of a Plea of Treſpaſs upon the Caſe, *&c.* and whereupon the ſaid *C.* by, *&c.* his Attorney complains, that whereas he the ſaid *C.* on the Day, *&c.* in the Seventh Year of the Reign of the Lord the now King, was and yet is ſeiſed of and in one Cloſe of Paſture, containing Twenty Acres, known by the Name of, *&c.* lying in *W.* in the County aforeſaid, in his Demeſne as of Fee, which ſaid Cloſe was on the ſaid Day of, *&c.* in the Year aboveſaid,

* Now by a late Statute, no Proceſs ſhall be ſerved againſt the Hundred on any Inhabitant, but upon the High Conſtable of the Hundred, who ſhall give publick Notice of it, and then enter an Appearance, and defend the Action; and if the Plaintiff recovers, no Execution to go againſt any Inhabitant or the Conſtable, but inſtead of ſerving it, the two next Juſtices of Peace are to cauſe a Taxation to be made upon every Pariſh within the Hundred, leviable on the Inhabitants by Conſtables, and the Money to be paid over to the Sheriff to the Uſe of the Plaintiff recovering, and the High Conſtable as to his Expences, *&c.* And the Party Robbed in 20 Days is to give publick Notice in the *Gazette*, deſcribing the Robber, and Circumſtances of the Robbery; and give Bond to pay Coſts, if Verdict be againſt him, *&c.* and no Hundred is chargeable, if any of the Robbers are taken in 40 Days after ſuch Notice given in the *Gazette*; alſo a Reward of 10 *l.* to be paid by the Hundred, for apprehending any Robber. 8 *Geo.* 2. *c.* 16.

and

and had been for divers Years then laſt paſt, well and ſufficiently hedged and ditched, and otherwiſe incloſed by him the ſaid *C.* for the Preſervation of the Grazing and Feeding in the ſame Cloſe growing: And whereas the ſaid Cloſe of Paſture is now and hath been, from the Time whereof the Memory of Man is not to the contrary, next adjoining to a certain common Field called *L. &c.* and the Graſs yearly growing in the ſaid incloſed Cloſe, hath for the Space of Twenty Years laſt paſt, being let at a reaſonable Price, been of the yearly Value of Ten Pounds of lawful Money of *Great Britain*: Nevertheleſs the ſaid *A.* not being ignorant of the Premiſſes, but contriving and maliciouſly intending totally to deprive the ſaid *C.* of all Benefit and Profit of the ſaid Cloſe, did on the ſaid Day, *&c.* in the Seventh Year of the Reign of the Lord the now King aforeſaid, break and throw down the ſaid Hedges of the ſaid *C.* that is to ſay, ten Perches of the Hedge incloſing the ſaid Cloſe, containing twenty Acres of the ſaid *C.*'s Land as aforeſaid, and kept the ſaid Hedges ſo broken and thrown down from the ſaid Day of, *&c.* in the Year aboveſaid, until the Day, *&c.* in the ſame Year, making divers Ruptures and Breaches therein; by Reaſon whereof divers Beaſts and Cattle, that is to ſay, Horſes, Oxen, Cows, Sheep, Calves, *&c.* of Perſons at that Time unknown, going and depaſturing in the common Field aforeſaid, on the ſaid Day of, *&c.* in the Year of the Reign, *&c.* aforeſaid, and at ſeveral other Days and Times between the ſame Day, *&c.* and the aforeſaid Day of, *&c.* did enter into the Cloſe of the ſaid *C.* aforeſaid, and tread down,

down, waſte and ſpoil, eat up and conſume the Graſs and Herbage of the ſaid *C.* then and there growing, amounting in the whole to the Value of Seven Pounds; whereby he the ſaid *C.* loſt and was deprived of the whole Commodity and Profit of the ſaid Cloſe, for and during the whole Time aforeſaid, to the Damage of the ſaid *C.* Seven Pounds; and thereof he brings his Suit, *&c.*

A Declaration for not Repairing Fences of a Ground.

Dorſet, ſſ. A. B. late of *M.* in the County of *D.* aforeſaid, Gentleman, was attached to Anſwer *C. D.* Yeoman, of a Plea of Treſpaſs upon the Caſe; and whereupon the ſaid *C.* by *W. H.* his Attorney complains, that whereas the ſaid *C.* the Day and Year, *&c.* was and ſtill is ſeiſed in his Demeſne, as of a Freehold for Term of Life, of and in one Cloſe of Land called *S.* ſituate lying and being in the Pariſh of *M.* in the County aforeſaid: And whereas the ſaid *A.* the ſaid Day and Year aboveſaid, was and yet is ſeiſed in his Demeſne as of Fee, of and in one Cloſe of Land called *T.* contiguouſly adjoining to the ſaid Cloſe of the ſaid *C.* called *S.* ſituate in *M.* aforeſaid; and the ſaid *C.* and *A.* of their ſaid ſeveral Cloſes reſpectively, ſo as aforeſaid being ſeiſed, the ſaid *C.* ſaith, that between the ſame Cloſes there is a certain Hedge and Fence ſeparating and dividing thoſe Cloſes from one another, which ſaid Hedge and Fence the ſaid *A.* and all his Anceſtors, and all thoſe whoſe Eſtate the ſame

ſame *A.* then had, in the ſaid Cloſe of Land called *T.* were, and from the Time whereof the Memory of Man is not to the contrary, have uſed to make, repair and maintain as often as need ſhould be, leſt any Cattle out of the ſaid Cloſe of Land of the ſaid *C.* called *S.* into the aforeſaid Cloſe of the ſaid *A.* or out of the ſaid Cloſe of the ſaid *A.* into the aforeſaid Cloſe of the ſaid *C.* ſhould at any Time eſcape, enter and do Damage: Nevertheleſs the ſaid *A.* not being ignorant of the Premiſſes, but endeavouring him the ſaid *C.* of the whole Commodity and Profit of the ſaid Cloſe of Land of the ſaid *C.* called *S.* entirely to deprive, afterwards, that is to ſay, the aforeſaid Day of, *&c.* in the Year aboveſaid, and from thence until the Day, *&c.* in the Seventh Year of the Reign of the Lord the now King, did ſuffer the Hedges and Fences between the ſaid Cloſe of Land of the ſaid *A.* called *T.* and the ſaid Cloſe of the ſaid *C.* called *S.* to be, remain and continue ruinous, broken down and in Decay, for Want of Reparation of the ſame; by Reaſon of which, the Cattle of divers Perſons, to the ſaid *C.* unknown, divers Days and Times within the Time aforeſaid, out of the aforeſaid Cloſe of the ſaid *A.* called *T.* into the aforeſaid Cloſe of the ſaid *C.* called *S.* by the Breaches and Decay of the Hedges and Fences aforeſaid, did enter and continue, and the Graſs and Corn of him the ſaid *C.* to the Value of One Hundred Shillings there late growing, did eat up, tread down and conſume: And alſo the Cattle of the ſaid *C.* in the ſaid Cloſe of Land called *S.* feeding out of the ſame Cloſe within the Time aforeſaid, into the ſaid Cloſe of the

ſaid

ſaid *A.* called *T.* by the ſaid Breaches and Decay of the ſaid Hedges and Fences of the ſame *A.* and from thence to Places to the ſaid *C.* altogether unknown, were eloined and ſtrayed; whereby he the ſaid *C.* is not only wholly defrauded of the Commodity and Profit of the ſaid Cloſe of the ſaid *C.* called *S.* but likewiſe did loſe the Cattle of him the ſaid *C.* of the Price of Ten Pounds out of the ſaid Cloſe of the ſaid *C.* ſo as aforeſaid ſtraying, to the Damage of the ſaid *C.* Thirty Pounds; and therefore he brings his Suit, *&c.*

A Declaration in Caſe *for Incloſing of Land, and depriving the Plaintiff of his Common.*

Somerſet, ſſ. A. B. late of, *&c.* was attached to Anſwer to *C. D.* of a Plea, *&c.* and whereupon the ſaid *C.* by, *&c.* his Attorney complains, that whereas the ſaid *C.* the Day of, *&c.* in the Sixth Year of the Reign of the Lord the now King, and always afterwards hitherto hath been ſeiſed, and as yet is ſeiſed of and in one Meſſuage, twenty Acres of Land, and ten Acres of Paſture, with the Appurtenances, in *W.* in the County aforeſaid, in his Demeſne as of Fee; and the ſaid *C.* and all thoſe whoſe Eſtate he now hath in the ſaid Meſſuage with the Appurtenances, from the Time whereof the Memory of Man is not to the contrary, have had, and were accuſtomed to have Yearly for themſelves, their Tenants and Farmers of the ſaid Tenement, with the Appurtenances, Common of Paſture for their Beaſts,

Beasts, Cows, Heifers, Calves and other Cattle, and for their Sheep, in and upon the Tenement and Lands aforesaid, with the Appurtenances, levant and couchant, in *W.* aforesaid, in a certain Place there called, *&c.* that is to say, for their Beasts, Cows, Heifers, Calves, *&c.* not exceeding the Age of four Years, in every Year, from the Third Day of *May*, until the greater Part of the Blades growing in the Corn-Fields of *W.* aforesaid shall be mowed, bound and carried away, and after that the greater Part of the said Blades are mowed, bound and carried away, then for their Sheep aforesaid, the same Year levant and couchant upon the Tenement aforesaid, with the Appurtenances, until the Feast of the Annunciation of the Blessed *Virgin Mary*, as to the said Tenement, with the Appurtenances belonging and appertaining: Nevertheless the said *A.* not being ignorant of the Premisses, but maliciously intending him the said *C.* not only of his Common of Pasture aforesaid, in the said Place called, *&c.* aforesaid, to Disinherit, but also of the Profit of his Common of Pasture aforesaid, with his Cattle aforesaid, in Manner aforesaid received, to deprive and frustrate, afterwards, that is to say, the Day, *&c.* in the said Sixth Year of the Reign of the Lord the now King abovesaid, at *W.* aforesaid, three Acres of Pasture called, *&c.* Parcel of the said Common inclosed with a certain great Ditch and a Hedge, and the said three Acres of Pasture so inclosed, from the said Day of, *&c.* in the Sixth Year abovesaid, hitherto with the said Ditch and Hedge inclosed hath kept, and still doth keep; and the same three Acres of Pasture, so as afore-

aforesaid inclosed, as a Warren for the nourishing and keeping of Conies, did keep, and Coney-Beroughs then and there for breeding of Conies and Rabbits, in and upon the aforesaid Three Acres and Pasture made and erected, and in the said Three Acres of Pasture so inclosed, Two Hundred Pair of Conies then and there did gather and put, and the said Conies there greatly have multiplied and bred, and the Conies and Rabbits coming of these Conies there breeding and multiplying, the Grass as well in the said Place called, &c. as in the said Three Acres of Pasture, have so much eaten up and consumed, that the said C. the Profit of his said Common of Pasture, which he for a long Time with the Cattle aforesaid had and received, could not take, enjoy and use, nor as yet can; to the great Prejudice of the said C. and the manifest Disinheriting and Deprivation of him the said C. of his Common of Pasture aforesaid, to the Damage of the said C. of Thirty Pounds; and thereupon he brings his Suit, &c.

A Declaration for over-charging a Common with Cattle.

Berks, ss. A. B. late of R. in the County aforesaid, Yeoman, was attached to answer C. D. &c. and whereupon the said C. by &c. his Attorney complains, that whereas the said C. was and yet is seised of One Messuage and Seven Acres of Land with the Appurtenances in, &c. in the County aforesaid, in his Demesne as of Fee; and being so thereof seised, the said C. and all those whose Estate he hath

in the Tenements aforeſaid, with the Appurtenances, from the Time whereof the Memory of Man is not to the Contrary, have had, and were accuſtomed to have Common of Paſture in Two Hundred Acres of Paſture Land, with the Appurtenances called *R.* Common, lying between the Borders of the Towns of *R.* and, *&c.* in the County aforeſaid, and abutting upon the Lands of, *&c.* for all their commonable Cattle in and upon the ſaid Meſſuage and ſeven Acres of Land, with the Appurtenances, levant and couchant in every Year at their Free Will and Pleaſure, as often as they ſhould think fit, as to the ſaid Tenement with the Appurtenances, belonging and appertaining; the ſaid *A.* of the ſaid Two Hundred Acres of Paſture, with the Appurtenances called *R.* Common, being ſeiſed in his Demeſne as of *Fee*, and ſufficiently knowing the Premiſſes: Nevertheleſs the ſaid *A.* maliciouſly intending the ſaid Common of Paſture of the ſaid *C.* with the Cattle of the ſaid *A.* in the ſaid Two Hundred Acres of Paſture, with the Appurtenances, unjuſtly to overcharge, and by Reaſon thereof to hinder and deprive the ſaid *C.* of his Profit and Common of Paſture aforeſaid, the Day of, *&c.* in the Year of the Reign, *&c.* at, *&c.* put his Cattle, that is to ſay, Five Hundred Sheep upon the aforeſaid Two Hundred Acres of Paſture, to depaſture the Graſs then and there growing; and thoſe Sheep in and upon the ſame Two hundred Acres to depaſture the Graſs there growing, from the ſaid Day, *&c.* in the Year aboveſaid, until the Day of, *&c.* in the Year, *&c.* there kept, with Intention to hinder him the ſaid *C.* of his Common of Paſture for all his commonable

Cattle

Cattle upon the ſaid Tenement and Seven Acres of Land, with the Appurtenances, levant and couchant by the Time aforeſaid; whereby he the ſaid *C.* his ſaid Common of Paſture for the whole Time aforeſaid loſt, to the Damage of the ſaid *C.* Ten Pounds; and thereof he brings his Suit, *&c.*

A Declaration in Caſe *brought by a Chirurgeon for Cure of a Wound.*

Middleſex, ſſ. A. *B.* late of *B.* in the County of *M.* aforeſaid, was attached to anſwer to *C. D.* of a Plea that whereas, *&c.* and whereupon the ſaid *C.* by *T. V.* his Attorney complains, that whereas the ſaid *A.* ſuch a Day and Year, at *B.* aforeſaid, in Conſideration that the ſaid *C.* being then a Chirurgeon, at the Special Inſtance and Requeſt of the ſaid *A.* would take upon him the Cure and Healing of the Right Hand of one *T. B.* Son of the ſaid *A.* ſorely hurt with a certain Gun, did aſſume upon himſelf, and to the ſaid *C.* then and there faithfully promiſe, that he the ſaid *A.* would pay to the ſaid *C.* the Sum of Ten Pounds of lawful Money of *Great Britain*, in manner following, that is to ſay, Five Pounds thereof then in Hand, and Five Pounds the Reſidue thereof, when the ſaid Hand of the ſaid *T. B.* by the means of the ſaid *C.* ſhould be cured and healed; and the ſaid *C.* giving Credit to the Promiſe and Aſſumption of the ſaid *A.* afterwards, that is to ſay, the ſaid Day of, *&c.* in the Year of the Reign aforeſaid, at the ſaid ſpecial Inſtance and Requeſt of the ſaid *A.* did take upon him the Cure and Healing

ing of the Hand of the ſaid *T. B.* ſo as aforeſaid hurt: And altho' the ſaid *A.* Five Pounds of the ſaid Ten Pounds to the ſaid *C.* then and there in Hand paid; and the Hand of the ſaid *T. B.* the Day of, *&c.* then next following, by the ſaid *C.* was cured and made whole; nevertheleſs the ſaid *A.* his Promiſe and Aſſumption aforeſaid, as to the other Five Pounds, of the ſaid Ten Pounds Reſidue, little regarding, but contriving and fraudulently intending the ſaid *C.* of the ſaid Five Pounds Reſidue, craftily to deceive and defraud, the ſame Five Pounds Reſidue of the Ten Pounds, to the ſaid *C.* (tho' to do the ſame by the ſaid *C.* the Day, *&c.* in the Year, *&c.* and often afterwards, at *B.* aforeſaid he was required) hath not paid, but that to pay to him hitherto hath refuſed, and ſtill doth refuſe; whereupon the ſaid *C.* ſaith that he is the worſe, and hath Damage to the Value of, *&c.* and thereupon he brings his Suit, *&c.*

A Declaration againſt a Chirurgeon for an Ill Cure.

London, *ſſ.* A. *B.* late of, *&c.* was attached to anſwer to *C. D.* of a Plea, *&c.* and whereupon the ſaid *C.* by, *&c.* his Attorney complains, that whereas he the ſaid *C.* the Day and Year, *&c.* and long before, had and ſtill hath a Wound and Swelling in his Left Foot, ſo that he could not walk thereon without Help, by Reaſon whereof the ſaid *C.* endeavoured to ſeek a Cure for the Healing of the Wound aforeſaid; and the ſaid *A.* well knowing the Premiſſes, and being a Man unſkilful and ignorant in

the Cure of the said Wound and Swelling aforesaid, meaning and intending him the said *C.* craftily and subtilly to deceive and defraud, the Day, *&c.* and Year abovesaid, at *L.* aforesaid, in the Parish of the Blessed *Mary* of the *Arches*, in the Ward of *Cheap*, did assure and affirm himself to the said *C.* to be skilful and expert, and to have the Knowledge of curing the Wound and Swelling aforesaid, in the left Foot of the said *C.* on which the said *C.* to the Assertion and Affirmation of the said *A.* giving Credit, then and there did retain the said *A.* to cure the Wound and Swelling of the said *C.* aforesaid: Whereupon the said *A.* for Ten Pounds and Ten Shillings by the said *C.* then and there in Hand paid, and for Ten Pounds and Ten Shillings further by him the said *C.* to the said *A.* upon the Finishing of the Cure aforesaid to be paid, took upon himself the Cure of the Wound and Swelling aforesaid, in the Left Foot of the said *C.* whereas in Truth the said *A.* at the Time of the Assertion and Affirmation aforesaid, or ever after, or before, had no Knowledge or Skill in the Curing of Wounds or Swellings, nor ever was Physician or Chirurgeon, *&c.* by Reason whereof, the said *A.* so unskilfully and negligently his Cure of the Wound and Swelling of the said *C.* aforesaid did intend, and medicines unfitting in curing the same did apply; that from thenceforth, and for want of Knowledge of the said *A.* in this Behalf, the Wound and Swelling in the Foot of the said *C.* yet remain, not only uncured, but more and more dangerous and hurtful to the said *C.* from Time to Time increasing, to the great Deceit, Damage and Impoverishing the said *C.* and the Danger

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of losing his Life, by a Mortification of the said Wound; whereupon he the said *C.* saith, that he is the worse, and hath Damage to the Value of Fifty Pounds; and thereof he brings his Suit, *&c.*

A Declaration in Trover *and Conversion.*

Somerset, ss. A. B. late of, *&c.* in the County aforesaid, was attached to answer to *C. D.* of a Plea of Trespass upon the Case, *&c.* and whereupon the said *C.* by *W. H.* his Attorney complains, that whereas the said *C.* on the Day of, *&c.* in the Sixth Year of the Reign of the Lord the now King, at *T.* in the County aforesaid, was possessed of One Gold Watch, and a Rose Diamond Ring, *&c.* of the Value of Thirty Pounds, as of his own proper Goods and Chattels; and being so thereof possessed, the said *C.* the said Gold Watch, and Diamond Ring, and other Goods and Chattels, out of his Hands and Possession lost, and mislaid; which said Watch and Ring, and other Goods and Chattels, afterwards, that is to say, the said Day, *&c.* in the Sixth Year aforesaid, at, *&c.* aforesaid, in the County aforesaid, by finding came to the Hands and Possession of the aforesaid *A.* Nevertheless the said *A.* knowing the said Gold Watch and Ring, and other Goods and Chattels aforesaid, to be the proper Goods and Chattels of the said *C.* and to him of Right to belong and appertain, contriving and fraudulently intending the said *C.* in this Particular craftily and subtilly to deceive and defraud, hath not deliver'd the Goods and Chattels aforesaid to the said *C.* altho' thereto often requested; but the said Watch and Ring, and other Goods

and Chattels aforesaid, afterwards, to wit, the Day of, &c. in the Year abovesaid, at, &c. aforesaid, in the County aforesaid, to his own proper Use converted and disposed, to the Damage of the said *C.* Forty Pounds; and therefore he brings his Suit, &c.

A Declaration for Slander *and Defamation.*

South'ton, ss. A. B. late of *F.* in the County aforesaid, Grocer, was attached to answer to *C. D.* of a Plea of Trespass upon the Case, &c. and whereupon the said *C.* by, &c. his Attorney complains, that whereas the said *C.* on the Day of, &c. in the Seventh Year of the Reign of the Lord the now King, and for several Years before then last past, and always afterwards hitherto was a Dyer, and the Art and Mystery of a Dyer for all that Time at *F.* aforesaid used with his utmost Skill, in exercising the same Art; and in using the said Art divers Goods, from divers Persons, as well upon his Credit as for ready Money, during the Time aforesaid, he had bought and sold, and so upon his Credit from Time to Time, well and truly had paid and delivered, and behaved himself in all his Contracts, Business and Dealings whatsoever, honest, true and just, and for that Reason had gained to himself the good Opinion and Esteem of all those with whom he had any Concerns; And whereas the said *C. D.* on the Day, &c. in the Seventh Year abovesaid, at *F.* aforesaid, had a Discourse with one *E. F.* of and concerning the Buying from the said *E.* a certain

tain great Quantity of *Indico*, which ſaid *Indico* the ſaid *C.* chiefly uſes in his Art and Myſtery aforeſaid, that is to ſay, Four Hundred Weight of the *Indico* aforeſaid, or thereabouts, which he the ſaid *E.* then had to ſell and diſpoſe of; and whereas alſo the ſaid *C.* then and there offered a great Price to the ſaid *E. F.* for his *Indico* aforeſaid, to wit, ſo much for every Hundred Pound Weight thereof, and had near agreed for the ſame: Nevertheleſs the aforeſaid *A. B.* not being ignorant of the Premiſſes, but fully knowing theſe Things, and contriving and maliciouſly intending the good Fame and Eſteem of the ſaid *C. D.* as much as he could to injure, and the ſaid *C.* of the Profit and Benefit which he by the aforeſaid Agreement with the ſaid *E. F.* might have had, to take away and deprive, on the ſaid Day of, *&c.* in the Year aboveſaid, at *F.* aforeſaid, then and there having Diſcourſe with the ſaid *E. F.* of the ſaid *C.* and of the *Indico* aforeſaid, belonging to the ſaid *E.* and the Price which he the ſaid *C.* promiſed to the ſaid *E.* for his *Indico* aforeſaid, in the Preſence and Hearing of many faithful Subjects of the Lord the King, of the ſaid *C.* and his Circumſtances, to the ſaid *E.* falſly, maliciouſly and openly ſpoke theſe following Words, that is to ſay; *I* (meaning the ſaid *A. B.*) *adviſe you to take Care of your ſelf*, (meaning the aforeſaid *E. F.*) *for if he* (meaning the ſaid *C. D.*) *get your* Indico (meaning the aforeſaid *Indico*) *you may get your Money as you* (meaning the ſaid *E. F.*) *can; for I* (the ſaid *A. B.* meaning) *know that he* (meaning the aforeſaid *C. D.*) *hath not Money to pay you*, (meaning the ſaid *E.*) *and I know him* (the ſaid *C. D.* again meaning) *better than you*, *&c.*

&c. by the ſpeaking and publiſhing of which ſaid falſe, feigned and ſcandalous Words, the ſaid *C.* in his good Name, Fame and Reputation is not only injured, and among ſome to whom his Circumſtances are not known is accounted and reputed an indigent Man, and worthy of no Credit; but alſo the ſaid *E. F.* on that Occaſion, declined to ſell his *Indico* aforeſaid to the ſaid *C.* and preſently after ſold the ſame to another, at a leſs Price than he the ſaid *C.* before promiſed; whereupon the ſaid *C.* ſaith, that he is the worſe, and hath Damage to the Value of One Hundred Pounds; and therefore he brings his Suit, &c.

A Declaration in Action of Treſpaſs.

Berks, ff. A. B. late of *N.* in the County aforeſaid, Yeoman, was attached to anſwer to *C. D.* of a Plea, wherefore with Force and Arms the Cloſe of the ſaid *C.* he broke, and his Graſs to the Value of Forty Shillings, there lately growing, by walking with his Feet he trod down and waſted, and his Corn and other Graſs there growing, with certain Cattle he trod down and conſumed; and alſo his Gates and Stiles there lately erected, he broke and pulled down, and the Wood of thoſe Gates and Stiles ariſing, of the Value of Fifty Shillings, he took and carried away, and other Wrongs he did to him, to the great Damage of the ſaid *C.* and againſt the Peace of the Lord the now King, &c. and whereupon the ſaid *C.* by *T. V.* his Attorney complains, that the ſaid *A.* on the Day of, &c. in the Seventh Year of the Reign of the Lord

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the now King, with Force and Arms, that is to ſay, with Clubs, Staves, &c. the Cloſe called, &c. of him the ſaid C. at N. aforeſaid he broke, and his Graſs to the Value, &c. there lately growing, with his Feet by walking trod down and conſumed; and his Corn, that is to ſay, Oats, Barley, Rye, Wheat, Peaſe and Beans, to the Value of, &c. there lately growing, with certain Cattle, that is to ſay, with Horſes, Cows, Calves and Pigs depaſtured, trod down and conſumed; and alſo the Gates, that is to ſay, Two Gates, and the Stiles, &c. of the ſaid C. there lately erected, he broke and pulled down, and the Wood, that is to ſay, One Load of Wood ariſing from the ſaid Gates and Stiles, to the Value, &c. took and carried away, by continuing the Treſpaſs aforeſaid, as to the treading down, waſting and conſuming of the Graſs aforeſaid, by walking with his Feet, and depaſturing, treading down, and conſuming of the Corn, and other Graſs aforeſaid, with the Cattle aforeſaid, from the ſaid Day, &c. in the Seventh Year abovesaid, until the Day, &c. next following, at divers Days and Times, and other Wrongs to him did, to the great Damage of the ſaid C. and againſt the Peace, &c. whereupon he ſays, he is the worſe, and hath Damage to the Value of Ten Pounds; and therefore he brings his Suit, &c.

A Declaration in Treſpaſs *and* Aſſault.

Surrey, ſſ. A. B. late of *K.* in the County aforeſaid, was attached to anſwer *C. D.* of a Plea, wherefore with Force and Arms, he made an Aſſault upon the ſaid *C.* at *E.* in the ſaid County, and him beat, wounded and evilly treated, ſo that his Life was diſpaired of, and other Injuries to him did, to the great Damage of the ſaid *C.* and againſt the Peace of the Lord the now King, *&c.* And whereupon the ſaid *C.* by, *&c.* his Attorney complains, that the ſaid *A.* on the Day of, *&c.* in the Year of the Reign, *&c.* with Force and Arms, that is to ſay, with Swords, Clubs and Knives, made an Aſſault on him the ſaid *C.* at *E.* aforeſaid, and him then and there beat, and evilly treated, ſo that he deſpaired of his Life, and other Injuries to him did, to the great Damage of the ſaid *C.* and againſt the Peace, *&c.* Whereupon he ſaith, that he is the worſe, and hath Damage to the Value, *&c.* and thereupon he brings his Suit, *&c.*

A Declaration by an Attorney *of* C. B.

London, ſſ. A. B. late of, *&c.* was attached by a Writ of the Lord the King of Privilege, iſſuing out of the Court here, to anſwer to *C. D.* Gent. one of the Attornies of the Court of the Lord the King of the Bench here, according to the Liberty and Privilege of the ſaid Bench, uſed and approved of in the ſame Court from the Time whereof the Me-

mory of Man is not to the contrary, of a Plea of Treſpaſs upon the Caſe, *&c.* and whereupon the ſaid *C.* in his proper Perſon complains, That whereas, *&c.* And therefore he brings his Suit, *&c.*

And here Pledges muſt be added to the Declaration either by or againſt an Attorney:

Pledges of Proſecution { *John Doe*, *Richard Roe.*

The Plaintiff having declared and given Rules for Anſwer, the Defendant is to deliver his *Plea* to the Plaintiff's Attorney; and if he be not to be found, or refuſeth it, 'tis to be left in the Office, to ſave a Judgment. *Mich.* 1654.

In every Plea, except to a *Scire facias*, it is neceſſary, that the Defendant ſhould come and defend the Force and Injury laid to his Charge, to make him a Party to the Matter in Variance; that is to ſuch a Charge, which the Plaintiff has given Pledges that he will maintain againſt him: But in a *Scire facias*, the Defendant is not in Law a Party to the Suit 'till he appears, nor is there any Wrong or Injury againſt him; and when he appears, he may plead by *Venit & Dicit* only.

If in any Action the Defendant Pleads a General Plea or Iſſue, as is moſt uſual, there is no more requiſite but that the Attorney for the Defendant do put his Hand to the Plaintiff's Attorney's Docket Book; and that being done, the Plaintiff's Attorney is to draw up the Plea, and make a Copy of the Iſſue, and deliver it to the Defendant's Attorney, who muſt receive it, and pay for entering his Plea; and then they

uſually

uſually give Warning for Trial. But if the Defendant Plead ſpecially, the Plea is to be under a Serjeant's Hand, and given to the Plaintiff's Attorney; alſo if the Plaintiff Reply ſpecially, or the Defendant Demurs to a Declaration, it is the ſame.

The Rules to plead muſt be entered in the Prothonotary's Office, that the Plaintiff's Attorney Declares in, by the Secondary there, for which he is paid 16 *d.* and if the Defendant on Rule to anſwer, do not plead before the Rule is expired, the Attorney for the Plaintiff may afterwards enter up Judgment by *Nil dicit*; and the Defendant on pleading any General Iſſue, may (after Rule given) Nonſuit the Plaintiff, if he doth not enter his Iſſue; and thereupon he may get Coſts ſigned by the Prothonatary, and enter up Judgment. After a *Reſpondeas Ouſter*, on Demurrer and Judgment, and Rule given, the Defendant is to plead forthwith, or the Prothonotary will ſign Judgment: In other Caſes, it has been adjudged a Standing Rule, that the Prothonotary muſt receive a Plea left in the Office at any Time before Judgment ſigned, tho' the Rule to plead be out.

By the ancient Courſe of the Court upon a common Writ, the Defendant is not obliged to anſwer the ſame Term the Writ is returnable, but may have an Imparlance, or Time to plead, until the ſubſequent Term; in which Term he muſt plead before the Rules for Pleadings are out, otherwiſe the Plaintiff may ſign Judgment, if a Plea has been demanded: But if it be a Country Cauſe, the Defendant on Application to the Court, or to a Judge, may obtain longer Time to plead, on his agreeing to plead an

iſſuable

iſſuable Plea, and receiving Notice of Trial; ſo as the Plaintiff be not delayed, but may try the Cauſe the next Aſſizes. And altho' in a Country Cauſe the Plaintiff hath ſigned his Judgment after the four Days Rule is out, the Court or a Judge will, on the Defendant's paying the Coſt, ſet aſide the Judgment, and give him a reaſonable Time to plead an iſſuable Plea: Tho' this has been known to be denied.

Now by the Order *Mich.* 1 *Geo.* 2. where Special Writs are made Returnable the firſt Return in *Hillary* or *Trinity* Term, or the firſt or ſecond Return in *Eaſter* or *Michaelmas* Term, unleſs the Defendant plead in four Days after the Appearance Day of the Return, Judgment will be entered by Default, *&c.* And by *Ord. Mich.* 3 *Geo.* 2. upon all Proceſs ſued out of this Court, Returnable the firſt or ſecond Return of any Term, if the Plaintiff declares in *London* or *Middleſex*, and the Defendant lives within twenty Miles of *London*, the Defendant ſhall plead within four Days after ſuch Declaration delivered, without any Imparlance: And in caſe the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from *London*, the Defendant ſhall Plead within eight Days after the Declaration delivered, without any Imparlance; and in Default of Pleading as aforeſaid, the Plaintiff may ſign his Judgment. Alſo the Declarations delivered Purſuant to this Rule, muſt be delivered with Notice to Plead, at ſuch Times accordingly. *Paſch.* 3 *Geo.* 2. See of Declarations *ante.*

In all Caſes within the foregoing Rule, Imparlances are taken away; and dilatory Pleas are ſo much diſcouraged, that in Perſonal Actions

tions you cannot have *Oyer* of an Original without moving the Court for it; whereas heretofore the Defendant was not obliged to plead till he had *Oyer*: Indeed in the *King's Bench*, they ſtill retain the old Method of making the Plaintiff's Attorney give the Defendant *Oyer* before he is obliged to Plead; but it is otherwiſe in the *Common Pleas*.

It is ſaid, that when a Delaration is upon a Bond, if the Defendant's Attorney, upon receiving the Declaration, do not crave that the Condition of the Bond may be entered with the Imparlance, and alſo pay for the ſame, then he is debarred from Pleading Conditions performed at any Time after, without moving the Court, and paying 5 *s.* to the Judges Box; but if the Defendant inſiſt upon it, he need not plead till he have it.

And oftentimes, where the Plaintiff's Action is juſt and right, the Defendant's Attorney, without any Pleading, will yield to a Judgment, either by *Non Sum Informatus*, or Confeſſion, ſo that the Plaintiff will ſtay Execution till a Time agreed upon: This may be done on the Declaration, upon which Judgment you may get Coſts taxed by the Prothonotary, and the Defendant will be thereby ſaved in his Perſon and Charges.

But if the Attorney for the Defendant Pleads to the Action, then you may join Iſſue, and go to Trial by *Niſi prius* at the next Aſſizes for the County.

A

A Plea of Tender *of Money due on Bond.*

AND the ſaid *A.* comes and defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where the Court will conſider thereof, and craves *Oyer* of the ſaid Writing Obligatory, (or Bond) and it is read to him, *&c.* He likewiſe craves *Oyer* of the Condition of the ſaid Bond there under written; and it is read to him in theſe Words, (here recite the Condition) which being read and heard, the ſaid *A.* ſays, That the ſaid *C.* ought not to have his ſaid Action againſt the ſaid *A.* becauſe he ſaith, that he was ready on the ſaid Day of, *&c.* mentioned in the ſaid Condition, before the iſſuing out of the Original Writ of the ſaid *C.* and then offered to pay to the ſaid *C.* the ſaid Sum of Fifty Pounds, which he ought to have paid him at the ſaid Day, according to the Form and Effect of the ſaid Condition, that is to ſay, at *B.* aforeſaid; and that neither the ſaid *C.* nor any other for him the ſame *C.* were then and there ready to receive from the ſaid *A.* the ſaid Fifty Pounds: And further the ſaid *A.* ſaith, that he always from the ſaid Day of, *&c.* hitherto was ready, and ſtill is ready to pay to the ſaid *C.* the ſaid Fifty Pounds; and that Sum the ſame *A.* brings here into Court, ready to pay to the ſaid *C.* and he prays that this may be inquired of by the Country, *&c.*

A Plea of Solvit ad Diem *to a Penal Bill, and Replication.*

AND the ſaid *A.* by *W. H.* his Attorney, comes and defends the Force and Injury, *&c.* when and where the Court will take the ſame into Conſideration, and ſaith, that the ſaid *C.* ought not to have or maintain his ſaid Action thereon againſt him, becauſe he ſays, That he paid to the ſaid *C.* upon the ſaid Day of, *&c.* the ſaid Twenty Pounds, which to him on the ſame Day he ought to pay, according to the Form and Effect of the Bill aforeſaid, to wit, at *D.* aforeſaid; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *C.* ought to have or maintain his ſaid Action againſt him, *&c.*

Repl. And the ſaid *C.* ſaith, that notwithſtanding any Thing above alledged by the ſaid *A.* in his Plea, he the ſaid *C.* ought not to be precluded from having his ſaid Action againſt the ſaid *A.* becauſe the ſaid *C.* ſaith, that the ſaid *A.* did not pay to the ſaid *C.* the ſaid Twenty Pounds, in Manner and Form as the ſaid *A.* above hath alledged; and this he prays may be inquired of by the Country.

A Plea of Payment *to an Action on ſeveral Promiſes.*

AND the ſaid *A.* by, *&c.* his Attorney, comes and defends the Force, Injury and Damages, and whatever elſe he ought to de-

ſend, when and where this Court will conſider thereof; and ſaith, that the ſaid *C.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſays, that after the making of the ſeveral Promiſes and Undertakings mentioned in the ſaid Declaration, and before the ſuing out the original Writ of the ſaid *C.* (that is to ſay) on the Day of, &c. in the Seventh Year of the Reign of the Lord the now King, at *B.* aforeſaid, in the ſaid County of *S.* he the ſaid *A.* paid to the ſaid *C.* the ſaid Sum of Ten Pounds, which he then and there received in full Satisfaction of all Sums of Money at that Time due from the ſaid *A.* to the ſaid *C.* and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *C.* ought to have his Action, &c.

A Plea Non Aſſumpſit, *and Replication.*

AND the ſaid *A.* as to the laſt Promiſe mentioned in the Declaration, and alſo as to Fifteen Pounds Part of the ſaid Thirty Pounds, contained in the firſt Promiſe in the ſaid Declaration mentioned, ſaith that he did not undertake, (or he made no ſuch Promiſe, &c.) in Manner and Form, as the ſaid *C.* above complains againſt him; and of this he puts himſelf upon the Country, and the ſaid *C.* does likewiſe the ſame. And as to Fifteen Pounds, Reſidue of the ſaid Thirty Pounds, mentioned in the ſaid firſt Promiſe in the ſaid Declaration, the ſaid *A.* ſaith, that the ſaid *C.* ought not to have or maintain his ſaid Action thereof againſt him; becauſe he ſaith, that after the

making

making the ſaid Promiſe and Undertaking, and before the Day of iſſuing out the original Writ of the ſaid *C.* to wit, on the Day, *&c.* in the Year of our Lord 1734, at the Pariſh of, *&c.* he the ſaid *A.* paid to the ſaid *C.* the ſaid Sum of Fifteen Pounds; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *C.* ought to have, or maintain his ſaid Action thereof againſt him, *&c.*

Repl. And the ſaid *C.* as to the ſaid Sum of Fifteen Pounds, Reſidue of the ſaid Thirty Pounds, mentioned in the ſaid firſt Promiſe and Undertaking ſaith, that notwithſtanding any Thing above alledged by the ſaid *A.* in his Plea abovementioned, he the ſaid *C.* ought not to be precluded from having his ſaid Action againſt him the ſaid *A.* becauſe he ſaith, that the ſaid *A.* hath not paid to the ſaid *C.* the ſaid Sum of Fifteen Pounds, in ſuch Manner and Form as the ſaid *A.* hath above in his Plea alledged; and this he prays may be inquired of by the Country; and the ſaid *A.* prays likewiſe the ſame.

A Plea that did not aſſume *as to ſome Promiſes, and of a Releaſe as to others.*

AND the ſaid *A.* as to the ſecond and third Promiſes and Aſſumptions above-mentioned, by him ſuppoſed to be made, he ſaith, that he did not aſſume upon himſelf in ſuch Manner and Form, as the ſaid *C.* above againſt him complains; and of this puts himſelf upon the Country, and the ſaid *C.* does likewiſe: And

as

as to the firſt Promiſe and Aſſumption ſo as aforeſaid by him ſuppoſed to be made to the ſaid *C.* he the ſaid *A.* ſaith, that the ſaid *C.* ought not to have his Action aforeſaid againſt him; becauſe he ſaith, that the ſaid firſt Promiſe and Aſſumption was made the Day of, *&c.* in the Year aboveſaid, and the ſaid *C.* after the ſaid Day, *&c.* in the ſaid Year, and before the ſuing out the original Writ of the ſaid *C.* (that is to ſay) the Day of, *&c.* in the Year aforeſaid, at, *&c.* aforeſaid, by his certain Writing of Releaſe, ſealed with the Seal of the ſaid *C.* and which the ſaid *A.* here ſhews in Court, the Date whereof is the ſame Day and Year above, by the Name of *C. D.* of, *&c.* in the County of *S.* Gentleman, remiſed and releaſed to the ſaid *A.* all Actions, Suits and Demands whatſoever, as by the ſaid Writing of Releaſe more fully appears; without that, that the ſaid *A.* after the ſaid Day, *&c.* in the Year aforeſaid, (as the ſaid firſt Promiſe and Aſſumption is ſuppoſed to be made) aſſumed upon himſelf in Manner and Form as the ſaid *C.* above againſt him complains; and this he is ready to verify: Wherefore he prays Judgment, if the ſaid *C.* ought to have his ſaid Action thereof againſt him; with this, that the ſaid *A.* is willing to verify, that the ſaid *C.* in the Declaration aforeſaid named, and the ſaid *C.* named in the ſaid Writing of Releaſe now in Court exhibited, are one and the ſame Perſon, and not any other or divers Perſons, *&c.*

A Plea Non Aſſumpſit *within Six Years, and Replication thereto.*

AND the ſaid *A.* comes and defends, *&c.* and ſaith, that the ſaid *C.* ought not to have or maintain his ſaid Action againſt him thereon; becauſe he ſaith, that he made no ſuch Promiſe or Promiſes in the ſaid Declaration mentioned, at any Time within Six Years, before the Day of the ſaid *C.*'s ſuing out his ſaid original Writ, in ſuch Manner and Form, as the ſaid *C.* above complains againſt him; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *C.* ought to have or maintain his ſaid Action againſt him, *&c.*

Repl. And the ſaid *C.* ſaith, that he (notwithſtanding any Thing above alledged by the ſaid *A.* in his Plea) ought not to be precluded from having his ſaid Action againſt the ſaid *A.* becauſe the ſaid *C.* ſaith, that the ſaid *A.* within Six Years before the Day of iſſuing out the ſaid original Writ of the ſaid *C.* (that is to ſay) on the Day of, *&c.* in the Year of the Reign, *&c.* did make ſuch Promiſe or Promiſes, as in the ſaid Declaration is or are mentioned, in ſuch Manner and Form as the ſaid *C.* above complains againſt him; and this he prays may be inquired of by the Country; and the ſaid *A.* prays likewiſe the ſame.

A Plea of Non Sum Informatus *to one Promiſe, and* Non Aſſumpſit *to the other.*

AND the ſaid *A.* by *T. V.* his Attorney, comes and defends the Force and Injury, when, *&c.* and as to the firſt Promiſe aforeſaid, the ſaid Attorney ſaith, that he is not informed by the ſaid *A.* to give any Anſwer thereto, whereby the ſaid *C. &c.* wherefore it is conſidered, that the ſaid *C.* ought to recover his Damages, by Occaſion of the not performing the ſaid firſt Promiſe, againſt the ſaid *A. &c.* And as to the ſecond Promiſe aforeſaid, the ſaid *A.* ſaith, that the ſaid *C.* his Action aforeſaid thereof againſt him the ſaid *A.* ought not to have or maintain, becauſe he ſaith, that he did not aſſume upon himſelf in Manner and Form as the ſaid *C.* above complains againſt him; and of this he puts himſelf upon the Country, and the ſaid *C.* doth likewiſe. And becauſe it is convenient and neceſſary that one Taxation may be made of the Damages by Occaſion of the Premiſſes, therefore let the Writ of Inquiry of Damages, by Reaſon of the ſaid Premiſſes ſtay, until the Iſſue between the Parties aforeſaid above joined, ſhall be tried and determined: And therefore as to the Trying as well the Iſſue aforeſaid between the ſaid Parties above joined, as to the Inquiring what Damages the ſaid *C.* in this Particular hath ſuſtained, it is commanded to the Sheriff that he cauſe to come here, *&c.*

A Plea in Caſe, *that Defendant did not overcharge a Common.*

AND the ſaid *A.* by, *&c.* his Attorney, comes and defends the Force and Injury, *&c.* and ſaith, that the ſaid *C.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe by Proteſtation that he hath not kept the ſaid Three Hundred Sheep upon the ſaid One Hundred Acres of Paſture, in ſuch Manner as the ſaid *C.* by his Writ and Declaration above ſuppoſeth; for Plea he ſaith, that before the Time wherein the Treſpaſs aforeſaid is ſuppoſed to be done, that is to ſay, the Day of, *&c.* in the Year, *&c.* one *E. F.* Gentleman, was ſeiſed as well of the ſaid One Hundred Acres of Paſture, as of the ſaid Meſſuage and Seven Acres of Land, with the Appurtenances, in his Demeſne as of Fee; which Eſtate of the ſaid *E. F.* of and in the ſaid One Hundred Acres of Paſture, and alſo the ſaid Meſſuage, *&c.* with the Appurtenances, the ſaid *A.* now hath, and the aforeſaid Time in which, *&c.* and long before had in the ſame; and this he is ready to verify: Wherefore he prays Judgment, *&c.*

A Plea that a Chirurgeon hath not Cured a Wound, and Replication.

AND the ſaid *A.* ſaith, that the ſaid *C.* ought not to have or maintain his Action aforeſaid againſt him; becauſe by Proteſtation that he did not aſſume upon himſelf in Manner

Manner and Form as the ſaid *C.* by his Declaration aforeſaid above doth ſuppoſe: For Plea the ſaid *A.* ſaith, that the Hand of the ſaid *T. B.* by the Means of the ſaid *C.* was not cured and made whole, as the ſaid *C.* by his Declaration aforeſaid complains againſt him; and this he is ready to verify: Wherefore he prays Judgment, if the ſaid *C.* ought to have or maintain his ſaid Action againſt him, *&c.*

Repl. And the ſaid *C.* ſaith, that notwithſtanding any Thing by the ſaid *A.* above in his Plea alledged, he the ſaid *C.* ought not to be precluded from having his ſaid Action againſt the ſaid *A.* becauſe he ſaith, that the ſaid Hand of the ſaid *T. B.* was by the Means of the ſaid *C.* cured and made whole, that is to ſay, at *B.* aforeſaid, in ſuch Manner and Form as the ſaid *C.* above complains againſt him; and this he prays may be inquired, *&c.*

A Plea of the General Iſſue *Not Guilty.*

AND the ſaid *A.* by *W. H.* his Attorney, comes and defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where, *&c.* and ſaith, that he is in no wiſe Guilty of the Premiſſes above laid to his Charge, as the ſaid *C.* above complains againſt him; and of this he puts himſelf upon his Country, and the ſaid *C.* does likewiſe the ſame, *&c.*

A Plea Not Guilty *in Treſpaſs.*

AND the ſaid *A.* by, *&c.* his Attorney, comes and defends the Force and Injury, when, *&c.* and ſaith, that he is Not Guilty of the Treſpaſs aforeſaid, in ſuch Manner as the ſaid *C.* above againſt him complains; and of this he puts himſelf upon the Country, and the ſaid *C.* likewiſe: Therefore the Sheriff is commanded, that he cauſe to come here twelve free and lawful Men, *&c.*

A Plea and Judgment on a Reſpondeas Ouſter.

AT which Day, as well the ſaid *C.* as the ſaid *A.* came in their proper Perſons, and hereupon all and ſingular the Premiſſes being viewed, and well underſtood by the Juſtices of this Court, it appears to the ſaid Juſtices here, that the ſaid Plea of the ſaid *A.* is inſufficient to quaſh the original Writ of the ſaid *C.* Therefore it is conſidered and adjudged by this Court, that the ſaid *A.* do make a further Anſwer to the ſaid original Writ of the ſaid *C.* and thereupon the ſaid *A.* comes and defends the Force, Injury and Damages, and whatever elſe he ought to defend, where and when this Court will conſider thereof; and ſaith, that before the original Writ of the ſaid *C.* he the ſaid *A.* did, *&c.* and of this he puts himſelf upon his Country; and the ſaid *C.* does likewiſe, *&c.*

Of Iſſues and Records, Trials, Judgments and Executions in C. B.

In the making up of *Iſſues*, the Court of *Common Pleas* makes no Uſe of *Memorandums*, as the *King's Bench* doth; except it be in Special Caſes, as in a Bill againſt an Attorney, *&c.* But after the Prothonotary's Name, in whoſe Office they enter, and the Term being written wherein the Iſſue is made up, they begin with the Declaration in this Form:

Cooke. Hillary *Term the Seventh of King* George II.

Dorſet, ſſ. A. B. late of *P.* in the County aforeſaid, Gentleman, was attached to Anſwer to *J. K.* of a Plea of Treſpaſs upon the Caſe, *&c.* And whereupon the ſaid *J.* by *T. V.* his Attorney complains, that whereas the ſaid *A. B.* on the Day of, *&c.* in the Year of our Lord One Thouſand ſeven Hundred and Thirty-three at *P.* aforeſaid, he then being a Perſon Trading, Merchandizing and Uſing Commerce there, according to the Uſage and Cuſtom of Merchants, made his certain Bill of Exchange in Writing, ſubſcribed with his own Hand, bearing Date the ſame Day and Year, and directed the ſaid Bill of Exchange to *C. D.* Gentleman, by which Bill of Exchange the ſaid *A. B.* required the ſaid *C. D.* to pay to one *E. F.* or to his Order, the Sum of Thirty Pounds, twenty Days after the Date of the ſaid Bill, Value received, and to place

it to the Account of, &c. which ſaid *E. F.* afterwards, that is to ſay, on the Day, &c. in the ſaid Year of our Lord, at *P.* aforeſaid, by his Indorſement upon the ſame Bill of Exchange, made according to the Uſage and Cuſtom of Merchants, ordered the Contents of the ſaid Bill to be paid to one *G. H.* or to his Order; which ſaid *G. H.* afterwards, that is to ſay, on the Day of, &c. in the Year aforeſaid, at *P.* aforeſaid, by his Indorſement upon the ſaid Bill of Exchange made, according to the Uſage and Cuſtom of Merchants, ordered the Contents of the ſame Bill to be paid to the ſaid *J. K.* or to his Order; And the ſaid *J. K.* in Fact ſays, that afterwards, that is to ſay, on the Day, &c. in the Year aboveſaid, at *P.* aforeſaid, he ſhewed the ſaid *C. D.* the ſaid Bill, with the ſaid Indorſements thereupon made, and then and there required him to accept the ſaid Bill of Exchange, which the ſaid *C.* then and there refuſed to do, or to pay the ſaid Thirty Pounds therein mentioned; of which ſaid Premiſſes the ſaid *A. B.* afterwards, that is to ſay, on the Day, &c. in the ſaid Year, at *P.* aforeſaid had Notice, by Reaſon of which Premiſſes, he the ſaid *A.* according to the Uſage and Cuſtom of Merchants, became and is chargeable to pay to the ſaid *J. K.* the ſaid Thirty Pounds mentioned in the ſaid Bill of Exchange; and the ſaid *A.* being ſo chargeable, afterwards, that is to ſay, the ſame Day and Year at *P.* aforeſaid, in Conſideration thereof, undertook and to the ſaid *J.* then and there faithfully promiſed, that he the ſaid *A.* would well and truly content and pay to the ſaid *J.* the ſaid Sum of Thirty Pounds: And alſo

whereas

whereas the ſaid *A.* on the Day of, *&c.* in the Year aforeſaid, was indebted to the ſaid *J.* in Seventy Pounds, for Money by the ſaid *A.* before that Time received, to the Uſe of the ſaid *J.* and being ſo indebted, the ſaid *A.* the Day and Year laſt above-mentioned, at *P.* aforeſaid, in Conſideration thereof, undertook and then and there faithfully promiſed to the ſaid *J.* that he the ſaid *A.* would well and truly content and pay to the ſaid *J.* the ſaid Seventy Pounds, whenever after he ſhould be thereto required. Nevertheleſs the ſaid *A.* not regarding his ſaid ſeveral Promiſes and Undertakings, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud him the ſaid *J.* in that Behalf, hath not paid the ſaid ſeveral Sums of Money, or any Part thereof, to the ſaid *J.* altho' the ſaid *A.* was thereunto required by the ſaid *J.* afterwards, that is to ſay, on the Day, *&c.* in the Year aforeſaid, and often after that Time at *P.* aforeſaid; but the ſaid *A.* always hitherto hath refuſed, and ſtill doth refuſe to pay the ſame, to the Damage of the ſaid *J.* Seventy Pounds; and for this he brings his Suit, *&c.*

Thus having written the Declaration, in a new Line begin the Iſſue:

And the ſaid *A.* by *W. H.* his Attorney, comes and defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where the Court will conſider thereof; and ſaith, that he did not undertake, in ſuch Manner and Form as the ſaid *J.* above complains againſt him; and of this he puts himſelf upon

upon his Country; and the ſaid *J.* doth likewiſe the ſame; therefore the Sheriff is commanded that he cauſe to come here on the *Octave* of the Purification, *&c.* Twelve free and lawful Men of the Body of his County, every one of which to have Ten Pounds a Year at leaſt of Lands, Tenements or Rents, by whom the Truth of the Matter may be the better known, and who are not related either to the ſaid *A.* or to the ſaid *J.* to recognize and make a Jury of the Country between the ſaid Parties in the ſaid Action; becauſe as well the ſaid *J.* as the ſaid *A.* between whom the Matter is in Diſpute, have ſubmitted themſelves to the Jury, *&c.*

All Iſſues are to be entered the Term they are joined, and not in any ſubſequent Term: And Prothonotaries ſhall not ſign any Records of *Niſi prius* until the ſame or an *Incipitur* be enter'd on Record, and the Fees paid. Records of *Niſi prius* are to be ſign'd and ſealed within Three Weeks after the End of *Hillary* and *Trinity* Terms. *Paſch. 5 W. & M. Trin. 29 Car. 2.*

As to *Records*, they muſt be made up, and the whole Proceedings carried on, in that Prothonotary's Office where the Cauſe was firſt entered; for every Clerk or Attorney ought to apply himſelf to one ſuch Office only, and there make his Entries, *&c.* And in the Proceedings in a Cauſe, a ſubſequent Roll may be amended by a former, as the Iſſue-Roll by the Plea-Roll, and both by the Imparlance-Roll; the former Roll being the Warrant to the ſubſequent; but where the firſt Roll is vitiated, it is not amendable by any other that follows.

It

It is ſaid the Iſſue-Roll, when made up, is not amendable, becauſe it then becomes a perfect Record, and to amend it would be to alter the Iſſue; but the *Poſtea* may be amended by the Iſſue, or by the Clerk of the Aſſize's Notes.

In making up your Record, you are to leave a Margin of about an Inch, and near the Top of your Piece of Parchment write the *Placita* in ſmall Secretary Hand, as you do the reſt of the Record; but the Word *Placita*, and the Firſt Word of the Plea, Replication, &c. ſhould be writ in a large Hand: And the Record you write thus:

PLEAS at *Weſtminſter* before Sir *Robert Eyre*, Knt. and his Companions, Juſtices of the Bench of the Lord the King, of *Trinity* Term, in the Seventh Year of the Reign of our Sovereign Lord *George* the Second, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, &c.

Roll 25.

Then beginning a new Line at Half an Inch Diſtance, you enter the Declaration, Plea and Iſſue, &c.

Wilts, ſſ. *A. B.* late of *S.* in the ſaid County of *W.* Gent. was attached to anſwer to *C. D.* of a Plea of Treſpaſs upon the Caſe, &c. Whereupon the ſaid *C.* by, &c. his Attorney complains, that whereas the ſaid *A.* on the *Day*, &c. in the Sixth Year of the Reign of the Lord *George* the Second now King of *Great Britain*, at *S.* aforeſaid, was indebted to the ſaid *C.* in One Hundred Pounds of lawful Money of *Great Britain*, for divers Goods, Wares and Merchandizes of the ſaid *C.* by him the ſaid *C.* to the ſaid *A.* at

his

his ſpecial Inſtance and Requeſt before that Time ſold and delivered; and being ſo indebted, he the ſaid *A.* in Conſideration thereof, afterwards, that is to ſay, on the Day and Year aboveſaid, at *S.* aforeſaid, in the County aforeſaid, aſſumed or took upon himſelf, and to the ſaid *C.* then and there faithfully promiſed, that he the ſaid *A.* would well and truly content and pay to the ſaid *C.* the ſaid One Hundred Pounds, when he ſhould be afterwards thereto required: And alſo whereas the ſaid *A.* afterwards, that is to ſay, on the Day and Year aforeſaid, at *S.* aforeſaid, in Conſideration that the ſaid *C.* had at the ſpecial Inſtance and Requeſt of him the ſaid *A.* ſold and delivered to the ſaid *A.* divers other Goods, Wares and Merchandizes, he the ſaid *A.* on the Day and Year aboveſaid, at *S.* aforeſaid, aſſumed and took upon himſelf, and then and there faithfully promiſed to the ſaid *C.* that he the ſaid *A.* would well and truly pay and ſatisfy to the ſame *C.* ſuch Sum of Money as thoſe Goods, Wares and Merchadizes were worth at the Time of their Sale and Delivery, when the ſaid *A.* ſhould be afterwards thereunto required; and the ſaid *C.* in Fact ſaith, that the Goods, Wares and Merchandizes laſt mentioned, ſo ſold and delivered to the ſaid *A.* were reaſonably worth at the Time of their Sale other One Hundred Pounds of like lawful Money of *Great Britain*, whereof the ſaid *A.* at *S.* aforeſaid had Notice: And alſo whereas the ſaid *A.* afterwards, that is to ſay on the ſame Day and Year aboveſaid, at *S.* aforeſaid, in the County aforeſaid, was indebted to the ſaid *C.* in Forty Pounds, of like lawful Money of *Great Britain*, for ſo much Money before that Time lent and accommodated

by

by the ſaid *C.* to the ſaid *A.* and being ſo indebted, he the ſaid *A.* in Conſideration thereof, afterwards, that is to ſay, on the Day and Year aboveſaid, at *S.* aforeſaid, aſſumed and took upon himſelf, and to the ſaid *C.* then and there faithfully promiſed, that he the ſaid *A.* would well and truly content and pay to the ſaid *C.* the ſaid Forty Pounds laſt mentioned, when he ſhould afterwards be thereto required. Nevertheleſs the ſaid *A.* not regarding his ſeveral Promiſes and Aſſumptions, ſo made to the ſaid *C.* in Form aforeſaid, but contriving and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *C.* in this Particular, hath not paid to the ſaid *C.* the ſaid ſeveral Sums of Money, or any Part thereof, altho' the ſaid *A.* afterwards, that is to ſay, on the Day of, *&c.* in the Year aforeſaid, at *S.* aforeſaid, and at divers other Times, was thereunto required by the ſaid *C.* but he hath hitherto refuſed, and ſtill doth refuſe to pay the ſame to him, to the Damage of the ſaid *C.* *&c.* and therefore he brings his Suit, *&c.*

And the ſaid *A.* by, *&c.* his Attorney, comes and defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where, *&c.* and ſaith, that he did not take upon himſelf, in Manner and Form as the ſaid *C.* hath above declared againſt him; and of this he puts himſelf upon the Country; and the ſaid *C.* doth likewiſe; therefore the Sheriff is commanded, that he cauſe to come here on, *&c.* Twelve good, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.*

Here

Here if the Cauſe be not try'd the ſame Term, then you muſt inſert a new *Placita* of that Term which the Cauſe is tried in, between this and the *Jurata*; and there 'tis proper to leave Two Lines blank, leſt the Cauſe ſhould not be tried that Term the *Placita* is of.

A Jurata *for the Aſſizes.*

Wilts. THE Jury is here reſpited, 'till *Three Weeks from the Day of St.* Michael, between *C. D.* the Plaintiff, and the ſaid *A. B.* late of *S.* in the ſaid County, Gent. in an Action of Treſpaſs upon the Caſe, unleſs his Majeſty's Juſtices appointed to hold the Aſſizes in the ſaid County on the Day of, *&c.* at *S.* aforeſaid, by Virtue of the Statute in ſuch Caſe made and provided, ſhould come before, through the Default of Jurors; and becauſe none of the Jurors came, therefore let the Sheriff have the Bodies, *&c.* (of the ſeveral Perſons by him returned here to the ſaid Juſtices, on his Majeſty's Writ of *Venire facias* to him directed, to make a Jury between the ſaid Parties in the ſaid Action): And be it known, that the Juſtices have delivered a Writ thereof here in this Court, this ſame Term to the Under-Sheriff of the ſaid County, to be executed in due Form of Law.

A

A Jurata *for a Trial in Middlesex.*

Middlesex. THE Jury is here respited, between *C. D.* Plaintiff, and *A. B.* late of, *&c.* Gent. in an Action of Trespass upon the Case, until *Fifteen Days from the Feast Day of Easter*, unless Sir *Robert Eyre*, Knt. his Majesty's Chief Justice of the Common Bench, appointed to try and determine Causes, by Force of the Statute in such Case made and provided, should on *Monday* the Day of, *&c.* at *Westminster* aforesaid, in the Great Hall of Pleas, commonly called *Westminster-Hall*, come there before, through Default of Jurors; and because none, *&c.* (as in the Former.)

A Jurata *for* London.

London. THE Jury is here respited, *&c.* until the Day, *&c.* (the very next Day after the Sittings, if in Term; but if not in Term, then to the First Return of the next Term) unless Sir *Robert Eyre*, Knt. his Majesty's Chief Justice of the Common Bench, appointed to try and determine Causes, by Force of the Statute in such Case made and provided, should on, *&c.* at *Guildhall*, *London*, come before, through the Default of Jurors, *&c.*

After the Record is made up, you must enter your Issue on a Roll from the Prothonotary; and then carry that and the Roll to the Prothonotary, who on paying him for the Issue, will sign your Record; and if there be Occasion, give

back the Roll: Then you are to carry the Record to the Clerk of the Treaſury, to be Sealed; in order to which, you muſt make out your Warrants of Attorney, to be given to the Clerk of the Warrants; and then you give it to the Clerk of the *Jurats* to examine, &c.

Form of the Warrants *of* Attorney.

Wilts. C. *D.* appoints in his Stead *T. V.* his Attorney, againſt *A. B.* late of *S.* in the ſaid County, Gent. in an Action of Treſpaſs upon the Caſe.

Wilts. A. B. late of *S.* in the ſaid County, Gent. appoints in his Stead *W. H.* his Attorney, in the ſaid Action.

A Writ of Venire facias.

GEORGE the Second, by the Grace of God, of *Great Britain*, *France* and *Ireland*, King, Defender of the Faith, &c. To the Sheriff of *Wilts*, Greeting. We command you, that you cauſe twelve free and lawful Men of the Body of your County, (every of which to have Ten Pounds a Year at leaſt, in Lands, Tenements or Rents, by whom the Truth of the Matter will be the better known) to come before our Juſtices at *Weſtminſter*, in Fifteen Days from the Feaſt-Day of Eaſter, and who are in no wiſe related, either to the ſaid *C. D.* the Plaintiff, or to the ſaid *A. B.* late of *S.* in your County, Gent. to make a Jury of the Country, between

the ſaid Parties, in an Action of Treſpaſs upon the Caſe, becauſe as well the ſaid *C.* as the ſaid *A.* between whom the Matter is in Diſpute, have ſubmitted themſelves to the Jury; and have you there the Names of the Jurors, and this Writ. Witneſs Sir *Robert Eyre*, Knt. at *Weſtminſter* the 12th Day of *February* in the Seventh Year of our Reign.

This *Venire facias* muſt be ſigned by the Prothonotary, for which you pay him One Shilling and Four Pence; and this may be done before the Record is ſealed. Your *Venire* muſt bear Teſte on the Firſt Day of the Term, on which Iſſue is joined; and be returnable at a Return-Day before you try the Cauſe. And the Teſte of your *Habeas Corpora* ſhould be on a Return-Day of the *Venire*, and the Return thereof be on a Day after your Cauſe is to be tried. And though originally at Common Law, there was to be Fifteen Days between the Teſte and Return of every Writ; yet by the Statute 13 King *Charles* the Second, *cap.* 2. There need not to be Fifteen Days between the Teſte-Day and the Day of the Return of any Writ or Writs of *Venire facias*, *Habeas Corpora*, or *Diſtringas*, *&c.*

If the Jury come not before the Judges upon the Return of the *Venire* for that Purpoſe, then they are Defaulters; and the Judges being obliged to try the Cauſe at *Niſi prius*, upon this iſſues further Proceſs of a *Habeas Corpora*, *&c.* for the Default of the Jurors not having come before.

A Writ of Habeas Corpora.

GEORGE the Second, &c. To the Sheriff of *W.* Greeting: We command you that you have the Bodies of the ſeveral Perſons named in the Panel annexed to this Writ, before our Juſtices at *Weſtminſter*, in Fifteen Days from the Feaſt-Day of *Eaſter*, &c. or before our Juſtices appointed to hold the Aſſizes in your County, by Force of the Statute in ſuch Caſe made and provided, if they ſhould come before, on *Wedneſday* the 15th Day of *March*, at *S.* in your County, Jurors ſummoned in our Court before our Juſtices at *Weſtminſter*, to make a Jury between *C. D.* Plaintiff, and *A. B.* late of *S.* in your County, Gent. in an Action of Treſpaſs upon the Caſe; and have you there this Writ. Witneſs, Sir *Robert Eyre*, Knt. at *Weſtminſter*, the 12th Day of *February* in the Seventh Year of our Reign.

If your *Habeas Corpora* be in *London*:

We command you, that you have the Bodies, &c. before our faithful and well beloved Sir *Robert Eyre*, Knt. our Chief Juſtice of our Court of the Bench, appointed by Force of the Statute in ſuch Caſe made and provided, &c. If he ſhall come before, on the Day, &c. of *February*, (which muſt be the Day of the Sittings when you intend to try the Cauſe) at *Guildhall London*; being Jurors ſummoned, &c.

The *Habeas Corpora* must be delivered to the Under-Sheriff at the Assizes, to return; and then that and the Record are to be given to the Judges Marshal, &c.

A Writ of Subpœna *for Witnesses.*

GEORGE the Second, &c. To *E. F. G. H. J. K.* and *L. M.* Greeting: We command you and every of you, hereby firmly injoining you, that laying aside all manner of Excuses and Delays whatsoever, you be in your proper Persons before our Justices appointed to take the Assizes, to be held at *S.* in the County of *W.* on the Day, &c. (of the Assizes) next following, to testify and declare the Truth in a certain Matter in Variance, depending in our Court before our Justices at *Westminster*, in an Action of Trespass upon the Case undetermined, between *C. D.* Plaintiff, and *A. B.* late of &c. in the County of *W.* Gent. Defendant; and this you, or either of you are in nowise to omit, under the Penalty of One Hundred Pounds, to be had of you, and every of you Witness Sir *Robert Eyre*, Knt. the Day of, &c. in the Seventh Year of our Reign.

For a *Subpœna* in *Middlesex* you say,

That you be before Sir *Robert Eyre*, Knt. our Chief Justice of the Common Bench, on *Wednesday* the 13th Day of *February*, now next ensuing, at *Westminster*, at the great Hall of Pleas, commonly called *Westminster-Hall*, to testify, &c.

And if the Cause be in *London*:

That you be before Sir *Robert Eyre*, &c. at Guildhall in *London*, on *Thursday* the 14th Day of *February*, now next ensuing, to testify, &c.

Note: The *Subpœna Ticket* is the same in this Court, as in the *King's Bench*, which see *ante*.

These last Writs and Processes are preparatory to *Trial*; and the Proceedings on Trials in *C. B.* are like unto those in the Court of *B. R.* the Plaintiff having given Eight Days Notice of Trial, if the Defendant lives within Forty Miles of *London*, and Fourteen Days if he live farther off; if he do not proceed, nor countermand the Notice before the Assizes, the Defendant, on Affidavit of his Attendance, may the next Term have a Rule for his Costs of Attendance: And the Rule must be observed by the Plaintiff's Attorney, after a Day for him to attend is set down by the Prothonotary; or on his Refusal or Neglect, if good Cause be not shewed why he did not, Twenty-six Shillings and Eight Pence Costs will be taxed at the Foot of the Rule; which the Defendant shall recover by serving the Plaintiff personally with a Copy of the Rule and Taxation, and demanding the Money; and then if he refuses to pay it, upon Affidavit thereof, and Motion made, the Court grants an Attachment against the Plaintiff.

A Notice of Trial.

Mr. A. B. Between C. D. Plaintiff } and *A. B.* Defendant. }

TAke Notice of Trial in this Cauſe to be on *Tueſday* the Day of, *&c.* at *S.* in the County of *W. &c.*

Yours T. V. *Attorney for the Plaintiff.*

An Affidavit of the Defendant's Attendance, in order to Trial.

Between C. D. *Plaintiff and* A. B. *Defendant.*

W. H. Gent. maketh Oath, that he this Deponent, with the Defendant and his Witneſſes in this Cauſe, attended at the laſt Aſſizes held at *S.* in the County of *W.* purſuant to a Notice of Trial formerly given by the Plaintiff's Attorney; and that the Plaintiff did not then proceed to Trial, neither did this Deponent receive or hear of any Countermand of the ſaid Trial —— Or of any Countermand thereof, until *Tueſday* the Day, *&c.* of this Inſtant *July*, at, *&c.* a Clock at Night.

W. H.

Sworn the Day and Year, &c. *before me* A. D.

In Caſes where the Plaintiff concludes *ad Patriam* in his Pleading, (that the Defendant is not obliged to join the Iſſue, nor Demur till a Four,

Days Rule is expired) the Defendant's Attorney shall be bound to accept of Notice of Trial upon the Back of such Pleading; whether the same be delivered to him or his Agent, or left in the proper Office, where it may be by the Course of the Court: And such Notice of Trial so given shall be as good and effectual, as if Issue had been joined. And in these Causes, if the Defendant doth not join Issue before the Rule is out, after Judgment obtained, the Defendant's Attorney shall be obliged to accept Notice of executing a Writ of Inquiry, from the Time that Notice of Trial was given on the Back of the Pleadings. No Countermand of Trial at the Assizes shall be good, unless given Two Days before the Commission Day; and not to be given on a Sunday. *Ord. Trin.* 2 *Geo.* 1. *Hill.* 6. and *Mich.* 5 *Geo.* 1.

By the Rules of the Court, if the Plaintiff will not try his Issue within such Time as he ought, the Defendant may make out a *Venire* by *Proviso*, and proceed to Trial thereon; which is of the same Form with the *Venire* before, only you add, *Provided always, That if two Writs shall come to you thereof, you may execute and return only one of them.*

And by the Statute 7 & 8 *W.* 3. If the Plaintiff do not proceed to Trial of the Issue at the First Assizes after the Teste of the *Habeas Corpora* or *Distringas* with a *Nisi prius*, then the Plaintiff, (except in Cases where Views by Jurors are directed) when ever he thinks fit to try the Issue at any subsequent Assizes, may sue forth a new Writ of *Venire facias* directed to the Sheriff: *That of new you cause to come before our Justices at Westminster*, &c. And if the Defendant shall

ſhall be minded to try the Iſſue by *Proviſo*, (when by the Courſe he may) he may ſue out a new *Venire Fac.* of the iſſuable Term next preceding ſuch intended Trial to be had at the next Aſſizes, directed to the Sheriff in Form aforeſaid by *Proviſo*; and proſecute the ſame by Writ of *Habeas Corpora*, &c. as if there had been no former *Venire* iſſued.

But when you intend to try a Cauſe by *Proviſo*, you muſt give Notice thereof: And if a Juror be withdrawn, the Defendant cannot carry the Cauſe down by *Proviſo*, becauſe it ſtays by Conſent of both Sides. If the Plaintiff gives Notice, that he will try his Cauſe on a certain Day, and there are ſo many Cauſes to be tried on the Day appointed in Term, &c. that the Cauſe cannot be then tried; the Plaintiff need not give new Notice, but the Defendant muſt attend till it can be tried.

In finding ſpecial *Verdicts* on Trials, where the Points are Single, and no ſpecial Concluſion, the Counſel muſt ſubſcribe the Points in Queſtion, &c. And Deeds are to be found according to the Subſtance, and not *in hæc verba*: Alſo where a Verdict finds entire Damages, and Damages are the Principal, and Part not Actionable, a *Venire fac. de novo* may iſſue for a new Trial. *Mich.* 1654.

As to the *Poſtea's* upon Records after Verdicts, the Record of the Cauſe is returned by the Clerk of the *Poſtea's*, and from thence you are to carry it to the Prothonotary to tax Coſts; who gives the *Poſtea* to the Clerk of the Judgments, and he takes Care to continue the ſame on the Rolls, &c. Here the Form of the *Poſtea* is as follows.

A Poſtea of a Cauſe tried at the Aſſizes.

AFterwards on the Day, and at the Place within contained, the within named *C. D.* by his Attorney within named, came before Sir *R. E.* Knt. Chief Juſtice of our Sovereign Lord the King, of his Common Bench, and *A. D.* Eſq; one of his Majeſty's Juſtices of the ſaid Common Bench, Juſtices of our Lord the King, appointed to hold the Aſſizes for the County of *W.* and the within named *A. B.* altho' ſolemnly required, came not there, but made Default: Therefore let the Jury, whereof Mention is made within, be accepted of againſt him by his Default; whereupon the Jurors ſummoned to be upon that Jury, ſome of them, (that is to ſay) *G. J. L. K. M. N. P. R. &c.* (naming the reſt that appeared) came, and were ſworn on that Jury: And becauſe the Remainder of the Jurors of that Jury have not appeared, therefore others of the By-Standers are by the Sheriff of the County aforeſaid, at the Requeſt of the ſaid *C. D.* and by the Command of the ſaid Juſtices, put on a-freſh, whoſe Names are in the within written Panel, to be affiled according to the Statute in ſuch Caſe made and provided; which ſaid Jury ſo newly put on, (that is to ſay) *T. S. W. Y.* who being ſummoned likewiſe came, to declare the Truth of the within Contents, together with the other Jurors before impanelled and ſworn; and being choſen, try'd and ſworn, declare upon their Oaths, that the ſaid *A.* did undertake, in Manner and Form, as the ſaid *C.* within complains againſt

againſt him: And they aſſeſs the ſaid *C. D.*'s Damages, occaſioned by the within Contents, beſides his Expences and Coſts laid out by him in this Behalf, to Twenty Pounds, and for his Expences and Coſts to Forty Shillings.

There are to be Sixteen Days allowed for Signing of *Judgments*, after every Term, except *Eaſter* Term; upon Cauſes depending in the Term precedent. *Ord. Mich.* 1654.

No Judgment whatſoever (final Judgments upon *Poſteas*, Writs of Inquiry, and *Non-proſ.* excepted) ſhall be ſigned by any of the Prothonotaries of this Court, unleſs the Stamp of the Clerk of the Warrants be firſt impreſſed on the Paper whereon ſuch Judgment is to be ſigned, whereby it may appear that Warrants of Attorney are duly filed. And all Judgments ſigned in Cauſes depending in this Court, ſhall be ſigned in the Office of one of the Prothonotaries, and not elſewhere. *Mich.* 5 *Geo.* 2.

And it is ordered, That no Rule ſhall be enlarged by the Court for ſhewing Cauſe, except Notice be given of Motion to enlarge ſuch Rule, and Affidavit is made thereof; and this Court will not ſet aſide any Judgment for Irregularity, without Motion made to the Court for that Purpoſe, before a Writ of Inquiry executed. *Ord. Mich.* 2 *Geo.* 2.

In this Court you make up the *Rolls*, and *Enter Judgments* thus:

Wilts, ſſ. A. B. late of, *&c.* in the County aforeſaid, Gentleman, was attached to Anſwer to *C. D.* of a Plea of Treſpaſs upon the Caſe, *&c.* (and ſo on to the End of the Declaration)

and

and thereof he brings his Suit, &c. And here you enter the reſt of your Pleadings and Iſſue, beginning a new Line at each Plea, &c.

But of theſe Judgments, the Attornies enter only ſuch as are had without Trial, *viz.* by *Nil dicit*, *Cognovit Actionem*, or *Non Sum Informatus*; for the Clerk of the Judgments enters the others: And in a Judgment by *Nil dicit*, after you have entered the Declaration as above, you proceed in this Manner.

A Judgment *on* Nil dicit *in Caſe.*

AND the ſaid *A. B.* by *W. H.* his Attorney, comes and defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where the Court will conſider thereof, and ſays nothing in Bar or Preclusion of the Action of the ſaid *C.* whereby the ſaid *C.* remains thereof undefended by the ſaid *A.* for which Reaſon the ſaid *C.* ought to recover his Damages againſt the ſaid *A.* occaſioned by the Premiſſes: But becauſe it is not known what Damages the ſaid *C.* hath ſuſtained by Reaſon of the ſaid Premiſſes; therefore the Sheriff is commanded, that he diligently inquire, by the Oath of twelve honeſt and lawful Men of his ſaid County, what Damages the ſaid *C.* hath ſuſtained, as well by Reaſon of the Premiſſes, as for his Expences and Coſts laid out by him about his Suit in this Behalf. And that the Sheriff cauſe the Inquiſition which he ſhall take thereon, to be here before the Juſtices of the Lord the King at *Weſtminſter*, in three Weeks from the Day of St. *Michael*, under his own

own Seal, and the Seals of those by whose Oath he takes such Inquisition; and that he have there at the same Time the said Writ, directed to him, as aforesaid.

If the Judgment *be in* Assumpsit.

INstead of saying, whereby the said *C.* ought to recover his Damages, occasioned by Reason of the Premisses, you say; whereby the said *C.* ought to recover Damages, occasioned by the said *A.*'s not performing several Promises and Undertakings, made by him to the said *C.* But because, *&c.*

A like Judgment *in Action of* Debt.

WHereby the said *C.* remains undefended by the said *A.* Therefore it is considered and adjudged, that the said *C.* do recover against the said *A.* his said Debt and his Damages, occasioned by detaining the same, adjudged by this Court to the said *C.* with his Assent, to Fifty Shillings; and be the said *A.* amerced, *&c.*

In Trespass *you are to say,*

FOR which Reason the said *C.* ought to recover his Damages, occasioned by the said Trespass, or the Trespass and Assault, *&c.* committed by the said *A.* against him the said *C.*

No

No *Execution* ſhall be made out by any Attorney, until he hath a Certificate from the Clerk of the Errors that the Record is not removed, *&c.* And Attornies are to bring all Writs of Error to the Clerk of the Errors to be allowed, or the Plaintiff may proceed to Execution. *Ord. Trin.* 28 *Car.* 2.

Petitions for Perſons charged in Execution, to be diſcharged out of Priſon, are to be exhibited before the End of the next Term, after ſo charged; and the Acts 2 & 3 *Geo.* 2. ſhall not relate to any Perſon taken on a *Capias* for running of Cuſtomable Goods, *&c.* The Clauſe in the firſt of the ſaid Statutes, for ſetting mutual Debts of the Plaintiff and Defendant one againſt the other, is made perpetual; and they may be pleaded in Bar, or given in Evidence on the General Iſſue, tho' the Debts are of a different Nature, except in Caſes of Penalties of Bonds, *&c.* and in Pleading, ſhall be ſhewn how much is juſtly due on either Side, and Judgment to be given for what ſhall ſo appear due to the Plaintiff, *&c.* Stat. 8 *Geo.* 2. *c.* 24.

A Writ of Capias ad Satisfaciendum *in Caſe.*

GEORGE the Second, *&c.* To the Sheriff of *S.* Greeting: We command you that you take *A. B.* late of *B.* in your County, Gentleman, if he be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before our Juſtices at *Weſtminſter*, on the *Octave* of the Purification of the Bleſſed Virgin *Mary*, to make Satisfaction to *C. D.* for Fifteen Pounds

and Ten Shillings, which in our Court before our Juſtices at *Weſtminſter*, were awarded to the ſaid *C. D.* for his Damages which he ſuſtained, by Reaſon of a certain Treſpaſs upon the Caſe, committed by the ſaid *A.* on the ſaid *C.* at *B.* aforeſaid in your County; (or if it be in Caſe upon an *Aſſumpſit*, then ſay) for his Damages which he has ſuſtained, by Reaſon of not performing ſeveral Promiſes and Undertakings made by the ſaid *A.* to the ſaid *C.* at *B.* aforeſaid in your County, whereof he is convicted; and have you there this Writ. Witneſs Sir *Robert Eyre*, Knt. at *Weſtminſter* the Twenty-third Day of *January* in the Seventh Year of our Reign.

If the Ca. Sa. *be on* Execution *for Debt.*

TO make Satisfaction to *C. D.* as well for a Debt of Fifteen Pounds, which the ſaid *C.* hath lately recovered againſt him in our Court before our Juſtices at *Weſtminſter*; as alſo for Fifty Shillings, which in our ſame Court were awarded to the ſaid *C.* for his Damages that he had ſuſtained, by Reaſon of detaining the ſaid Debt, whereof the ſaid *A.* is convicted: And have you there this Writ. *Witneſs*, &c.

A Ca. Sa. *in Treſpaſs and Aſſault.*

TO make Satisfaction, *&c.* for his Damages which he ſuſtained, by Reaſon of a certain Treſpaſs and Aſſault, (or Treſpaſs, Aſſault and Impriſonment, *&c.*) committed by the ſaid *A.* againſt the ſaid *C.* againſt our Peace at *B.* in your County, whereof he is convicted, *&c.*

A

A Writ of Fieri facias *in Caſe.*

GEORGE the Second, *&c.* To the Sheriff of *W.* Greeting: We command you, that you cauſe to be made of the Goods and Chattels of *A. B.* late of *T.* in your County, Clothier, in your Bailiwick, Thirty-ſix Pounds, which in our Court, before our Juſtices at *Weſtminſter*, were awarded to *C. D.* for his Damages which he ſuſtained, by Reaſon of not performing certain Promiſes and Undertakings made by the ſaid *A.* to the ſaid *C.* at *M.* in your County; and have you the Money before our Juſtices at *Weſtminſter*, on the Day, *&c.* to render to the ſaid *C.* for his ſaid Damages, whereof the ſaid *A.* is convicted; and have you there this Writ. *Witneſs*, &c.

A Fieri fac. *in Debt.*

THAT you cauſe to be made of the Goods and Chattels of *A. B.* late of *M.* in your County, Gentleman, in your Bailiwick, as well a certain Debt of Twenty Pounds, which *C. D.* hath recovered againſt him, in our Court before our Juſtices at *Weſtminſter*, as alſo Fifty Shillings, which in our ſame Court were awarded to the ſaid *C.* for his Damages which he ſuſtained, by Reaſon of detaining his ſaid Debt; whereof the ſaid *A.* is convicted, *&c.*

A Fieri fac. *in Treſpaſs.*

THAT you cauſe to be made, *&c.* for his Damages which he ſuſtained, by Reaſon of a certain Treſpaſs committed with Force and Arms, and againſt our Peace, by the ſaid *A.* againſt the ſaid *C.* at *M.* in your County, whereof he is convicted.

A Writ of Elegit *on Execution.*

GEORGE the Second, *&c.* To the Sheriff of *S.* Greeting: Whereas *C. D.* lately in our Court, before our Juſtices at *Weſtminſter*, by the Conſideration of the ſame Court, recovered againſt *A. B.* late of *R.* in your County, Ironmonger, as well a certain Debt of Seventy-three Pounds, as alſo Sixty Shillings, which in our ſame Court were awarded to the ſaid *C. D.* for his Damages which he had ſuſtained by Reaſon of detaining the ſaid Debt, whereof he is convicted: And the ſaid *C.* afterwards came into our ſame Court, and according to the Form of the Statute in that Caſe made and provided, made his Election to have delivered to him all the Goods and Chattels of the ſaid *A. B.* (except his Oxen and Beaſts of Plough) and likewiſe a Moiety of all his Lands and Tenements in your Bailiwick, *to hold* the ſaid Goods and Chattels as his own Goods and Chattels, and the ſaid Moiety of the ſaid Lands as his Freehold, to him and his Aſſigns, according to the Form of the ſaid Statute, until he

he ſhall have levied the ſaid Debt and Damages thereon. *And therefore* we command you, that without Delay, you cauſe to be extended at a reaſonable Price, and delivered to the ſaid *C.* all the Goods and Chattels of the ſaid *A.* (except his Oxen and Beaſts of Plough) and likewiſe a Moiety of all his Lands and Tenements, in your Bailiwick, of which the ſaid *A.* was ſeiſed, on the Day, &c. in the Seventh Year of our Reign, (at which Day Judgment was given thereupon) or at any Time ſince; for him the ſaid *C.* to keep the ſaid Goods and Chattels as his own Goods and Chattels, and alſo for him and his Aſſigns to hold the ſaid Moiety as their Freehold, according to the Form of the ſaid Statute, until the ſaid Debt and Damages ſhall be thereof levied: And after what Manner you ſhall execute this our Precept, do you make appear to our Juſtices at *Weſtminſter*, in Fifteen Days from the Feaſt Day of *Eaſter*, under your Seal, and the Seals of thoſe Perſons by whoſe Oaths you ſhall make ſuch Extent and Appraiſement; and have you there this Writ. *Witneſs*, &c.

An Elegit *after a* Fieri facias *againſt Executors.*

GEORGE the Second, &c. To the Sheriff of *W.* Greeting. Whereas by our Writ, we lately commanded our Sheriff of *D.* that of the Goods and Chattels which were of *A. B.* lately called *A. B.* of, &c. Gentleman, at the Time of his Death in the Hands of *T. E.* late of *M.* in your County, Yeoman, and *J. F.* late of

of the ſame Place, Grocer, being Executors of the laſt Will and Teſtament of the ſaid *A. B.* the Teſtator, in his Bailiwick, he ſhould cauſe to be made, as well a Debt of One Hundred and Fifty Pounds, which *C. D.* had lately recovered in our Court, before our Juſtices at *Weſtminſter*, againſt the ſaid *T. E.* and *J. F.* as alſo Seven Pounds, which in our ſame Court were awarded to the ſaid *C. D.* for his Damages which he ſuſtained by Reaſon of detaining the ſaid Debt, to be levied of the ſaid Goods and Chattels, if they had ſo many, (or ſo much) unadminiſtred in their Hands; and if they ſhould not have ſo many, then the ſaid Debt and Damages to be levied of the proper Goods and Chattels of the ſaid *T. E.* and *J. F.* and that he the ſaid Sheriff ſhould have the Money before our Juſtices at *Weſtminſter*, on the Day, *&c.* laſt paſt, to render to the ſaid *C.* for his ſaid Debt and Damages, whereof the ſaid *T. E.* and *J. F.* are convicted: And the ſame Sheriff at that Day, returned to our Juſtices at *Weſtminſter*, that the ſaid *T. E.* and *J. F.* at the Day of ſuing out the ſaid original Writ of the ſaid *C.* (that is to ſay) on the Day of, *&c.* in the Sixth Year of our Reign, had divers Goods and Chattels which were of and belonging to the ſaid *A. B.* the Teſtator, at the Time of his Death, in their Hands unadminiſtred, to the Value of, *&c.* whereof the ſaid *C.* might have had Satisfaction for his ſaid Debt, as it was found by a certain Jury of the County by Virtue of our Writ of, *&c.* before, *&c.* which ſaid Goods and Chattels, they the ſaid *T. E.* and *J. F.* had waſted, converted and diſpoſed of to their own Uſe; whereby the ſaid Sheriff

was not able to levy the ſaid Debt and Damages, or any Part thereof. And our ſaid Sheriff of *D.* further returned, that the ſaid *T. E.* and *J. F.* had not any Goods or Chattels in his Bailiwick, whereof he was able to levy the ſaid Debt and Damages, or any Part thereof, as he was commanded to do; wherefore it was conſidered in our ſame Court, that the ſaid *C.* might have an Execution againſt the ſaid *T. E.* and *J. F.* for the ſaid Debt and Damages, to be levied upon the proper Goods and Chattels of the ſaid *T. E.* and *J. F.* And the ſaid *C.* afterwards came into our ſame Court, and according to the Form of the Statute in ſuch Caſe made and provided, choſe to have delivered to him, all the Goods and Chattels of the ſaid *T. E.* and *J. F.* (except their Oxen and Beaſts of Plough) and likewiſe a Moiety of all their Lands and Tenements in your Bailiwick, to hold, &c. And therefore we command you, &c.

Note; If upon an *Elegit* there be no Execution but of Goods, for want of Lands, and the Goods are inſufficient, a *Capias* may iſſue; for in ſuch Caſe the *Elegit* is in Effect but a *Fieri facias*, tho' the Word be *Elegit*: But if there be Land, and it is extended, then it is otherwiſe. If a Judgment is had againſt one, who thereupon ſells his Lands; in whoſe Hands ſoever the Lands are, they ſhall be liable to that Judgment, and may be extended on an *Elegit*. Where an *Elegit* may be after a former like Writ, appears by the following Writ, *viz.*

An

An Elegit *after an* Elegit, *on Diſcovery of other Lands*, &c.

GEORGE the Second, &c. To the Sheriff of *D.* Greeting: Whereas *C. D.* lately in our Court, before our Juſtices at *Weſtminſter*, by the Conſideration of the ſame Court, had recovered againſt *A. B.* late of *S.* in your County, Fifty Pounds, which in our ſame Court were awarded to the ſaid *C.* for his Damages which he had ſuſtained by Reaſon of a certain Treſpaſs committed by the ſaid *A.* againſt the ſaid *C.* with Force and Arms, and againſt our Peace, at *S.* aforeſaid in your County, whereof he is convicted; and the ſaid *C.* afterwards came into our Court, and according to the Form of the Statute in that Caſe made and provided, choſe to have delivered to him all the Goods and Chattels of the ſaid *A.* (except his Oxen and Beaſts of Plough) and likewiſe a Moiety of all his Lands and Tenements in your Bailiwick, to hold the ſame Goods and Chattels as his own Goods and Chattels, and alſo to hold the ſaid Moiety as his Freehold, to him and his Aſſigns, according to the Form of the ſaid Statute, until the ſaid Damages ſhould be levied thereupon: Wherefore we commanded you, that without Delay, you ſhould cauſe to be extended by a reaſonable Price, and deliver to the ſaid *C.* all the Goods and Chattels of the ſaid *A.* (except his Oxen and Beaſts of Plough) and likewiſe a Moiety of all his Lands and Tenements in your Bailiwick, of which the ſaid *A.* was ſeiſed or poſſeſſed of, the Day, &c.

(on which Day Judgment was given thereon) for him to keep the ſaid Goods and Chattels as his own Goods and Chattels, and alſo to hold the ſaid Moiety as his Freehold, to him and his Aſſigns, according to the Form of the ſaid Statute, until he ſhould have levied the ſaid Damages thereof; and in what Manner you ſhould execute that our Precept, you were to make appear to our Juſtices at *Weſtminſter*, on the Day, &c. And you having returned to our Juſtices at *Weſtminſter*, a certain Inquiſition taken before you at, &c. on the Day of, &c. laſt paſt, by the Oaths of twelve honeſt and lawful Men of your Bailiwick; by which it is found, that the ſaid *A.* was ſeiſed of a Meſſuage or Tenement in, &c. with the Appurtenances, and alſo, &c. And further, that the ſaid *A.* at the ſaid Day on which the ſaid Judgment was given, or at any Time afterwards, had not any other Lands or Tenements in your County, which to the Knowledge of the Jurors aforeſaid could be extended, &c. Whereupon the ſaid *C.* came into our Court, ſaying, that the ſaid *A.* at the Time of giving the ſaid Judgment, and afterwards, had divers Lands and Tenements of the yearly Value of Ten Pounds, beſides the ſaid Meſſuage or Tenement above ſpecified in the ſaid Inquiſition; and was alſo poſſeſſed of divers Goods and Chattels in your County, to the Value of, &c. which you might have extended, appraiſed, and delivered to the ſaid *C.* *And therefore* we command you, as before we commanded you, that you cauſe to be extended by a reaſonable Price, and to be delivered to the ſaid *C.* all the ſaid Goods and Chattels of the ſaid *A.* (except his Oxen and

Beaſts

Beasts of Plough) and likewise a Moiety of all his Lands and Tenements in your County, besides the said Messuage, &c. in the Inquisition above specified; of which the said *A.* at the Time of giving the said Judgment, or at any Time since, was seised or possessed; and also a Moiety of the said Messuage or Tenement, &c. with the Appurtenances above specified in the said Inquisition, for him and his Assigns to hold the same as their Freehold, according to the Form of the Statute in such Case made and provided, until the said Damages shall be levied thereupon: And in what Manner, &c. and have you there this Writ. *Witness*, &c.

A Sale of a Term *of Years taken in Execution.*

THIS Indenture made, &c. between *G. M.* one of the Bailiffs of *E. S.* Esq; Sheriff of the County of *G.* of the one Part, and *F. E.* of, &c. of the other Part. Whereas *A. B.* at the Time of making the Warrant herein aftermentioned, was possessed of a Term of Years yet to come, of and in all that Close or Parcel of Land, situate and lying, &c. And whereas *C. D.* in the Court of Common Pleas at *Westminster* did lately recover against the said *A. B.* one Judgment for Forty Pounds Debt, and Thirty Shillings Costs of Suit, upon which Judgment in the Term of, &c. last past, a Writ of *Fieri facias* returnable, &c. issued out of the said Court, and was directed and delivered to the said Sheriff of *G.* in Form of Law to be executed; which said Sheriff, on the Day, &c.

laſt, made his Warrant unto the ſaid *G. M.* and others, jointly and ſeverally for the Execution of the ſaid Writ: And the ſaid *G. M.* by Virtue of the ſaid Writ, and the ſaid Warrant to him made as aforeſaid, hath entered into and upon the ſaid Cloſe or Parcel of Land, and ſeiſed and taken the ſame, together with the Eſtate, Term and Intereſt of the ſaid *A. B.* therein. Now this Indenture witneſſeth, that the ſaid *G. M.* in Purſuance of the ſaid Writ and Warrant, and for and in Conſideration of Ten Pounds, to him by the ſaid *E. F.* before the Sealing and Delivery hereof, well and truly in Hand paid, hath bargained and ſold, and by theſe Preſents doth fully and abſolutely bargain and ſell unto the ſaid *F. E.* all the ſaid Cloſe or Parcel of Land above-mentioned, and all the Eſtate, Right, Title and Intereſt of the ſaid *A. B.* of, in and to the ſame: To have and to hold unto the ſaid *F. E.* for and during all the Remainder of ſuch Term of Years, as the ſaid *A. B.* had in the ſaid Cloſe of Land, in as large and ample Manner as he the ſaid *A. B.* his Executors, Adminiſtrators or Aſſigns, might, ſhould, or ought to have held and enjoyed the ſame. *In Witneſs*, &c.

A Writ of Scire facias *brought by Executors againſt Executors.*

GEORGE the Second, *&c.* To the Sheriff of *B.* Greeting: Whereas *C. D.* and *E. F.* Executors of the Teſtament of *G. H.* lately called, *&c.* heretofore in our Court of Common Bench, that is to ſay, in *Eaſter* Term, in the Sixth

Sixth Year of our Reign, before Sir *Robert Eyre*, Knt. and his Brethren, our Juſtices of the ſaid Court of Common Bench, by the Conſideration of the ſame Court, had recovered againſt *A. B.* late of, *&c.* Executor of the laſt Will and Teſtament of *T. B.* Gent. as well a certain Debt of Thirty Pounds, to be levied of the Goods and Chattels of the ſaid *T. B.* as alſo Thirty-five Shillings, which in our ſame Court were awarded to the ſaid *C. D.* and *E F.* for their Damages which they had ſuſtained by Reaſon of detaining the ſaid Debt, to be levied of the Goods and Chattels of the ſaid *T.* if he ſhould have ſo many; and if not, then the Damages aforeſaid, to be levied of the proper Goods and Chattels of the ſaid *A.* whereof he is convicted, *&c.* as by the Record and Proceedings thereof, here remaining in our ſaid Court of Common Bench, manifeſtly may appear: Nevertheleſs Execution of the ſaid Judgment yet remains undone; and the ſaid *E.* after the ſaid Judgment was ſo given, took to Huſband one *W. L.* as we have received Information from the ſaid *W.* and *E.* And becauſe we are willing that thoſe Things which are Juſt and Right ſhould have a due Execution; therefore we command you, that by honeſt and lawful Men of your Bailiwick, you cauſe the ſaid *A.* to know, that he muſt be before our Juſtices at *Weſtminſter*, on the Day, *&c.* to ſhew if he has, or knows of any Cauſe, why the ſaid *C. W.* and *E.* ought not to have an Execution againſt him for the ſaid Debt and Damages, according to the Form and Effect of the ſaid Recovery, if it ſhall ſeem expedient for him ſo to do; and have you there the Names

of those Persons by whom you shall so cause it to be known to him, and this Writ. *Witness*, &c.

Of Outlawries, Writs of Habeas Corpus, and of Privilege, &c. in C. B.

By the Orders of this Court, where an *Outlawry* is reversed, if the Plaintiff proceeds not in two Terms after Notice, the Defendant shall have Costs taxed by the Prothonotary. *Ord. Trin.* 33 *Car.* 2.

No Outlawry, after the Death of the Plaintiff, shall be reversed without the Defendant's Appearing, and putting in Bail to the Executor or Administrator of the Plaintiff; provided the Plaintiff's Attorney, within fourteen Days after Notice given of the Defendant's Intention to reverse the Outlawry, deliver the Names of such Executors, &c. to the Prothonotary. And if a *Supersedeas* be not put in on a Writ of Exigent, before the Day of Appearance, it shall not be allowed until the Defendant hath paid Costs: Also upon reversing an Outlawry, before any *Supersedeas* is granted, the Defendant shall give Special Bail, if the Sum or Damages amount to 10*l.* and pay Costs to the Plaintiff. Where Persons are enlarged upon a *Capias Utlagatum* before Judgment, without a *Supersedeas*, the Sheriff, &c. shall be punished and fined. *Ord. Trin.* 2 *Jac.* 2.

The particular Manner of proceeding to Outlawry, and the Reversal thereof, see *Outlawries* in *B. R.*

A

A *Habeas Corpus cum Cauſa, &c.* directed to any Sheriff, unleſs of *London* or *Middleſex*, is not to be returnable *immediatè*, or in the Vacation-Time, but at a Day certain in Court in the Term. But ſuch *Habeas Corpus* to the Sheriffs of *London* and *Middleſex* may be granted in Term or Vacation returnable immediately; and then the Sheriff ought to make his Return the ſame Day that the Writ is delivered, and bring the Body immediately as is required by the Writ: And where a Writ of *Habeas Corpus* is directed to a Sheriff, Gaoler, *&c.* in any other Caſe, the Priſoner ſhall be brought in Cuſtody, according to the Writ at the Day limited, without permitting him to wander abroad in the mean Time, upon Pretence thereof, *Ord. Mich.* 1654.

Writs of *Habeas Corpus*, iſſued to the inferior Courts of *London*, *Weſtminſter*, *Southwark*, and other Courts within five Miles of *London*, may be returned *immediatè*. And if the Defendant intends to be bailed, then upon or within four Days after Allowance of the Writ, Notice is to be given in Writing of the Names and Addition of the Bail, the Time when, and the Judge before whom the ſame is intended to be put in, to the Plaintiff or his Attorney, or him that cauſed the Plaint to be entered; and if none can be found, ſuch Notice of the Premiſſes muſt be left in Writing with the chief Clerk of the inferior Court, or his Deputy, by the Party that tenders the Bail, or his Attorney, and Oath is to be made of it: And if no Bail in ſuch Caſes be put in within eight Days after the *Habeas Corpus* allowed, in thoſe Courts where

it

it is returnable *immediatè*, a *Procedendo* may be granted by any Judge of this Court, if desired, before Bail taken. *Mich.* 1654.

Where Bail is given in the Absence of the Plaintiff, or his Attorney, it is *de bene esse*; and if Exception be not made within twenty Days after Notice given to the Plaintiff, or his Attorney, of the Names of the Bail, and before whom taken, then upon Oath made of such Notice, the Bail shall be delivered out to be filed: And if Bail upon a *Habeas Corpus* be taken before a Judge at his Chamber, and not excepted against; if it be not filed within four Days after the twenty Days, a *Procedendo* may be had, upon Certificate that it is not filed. *Ibid.*

In Term-Time the Plaintiff in the inferior Court may speed the Defendant to put in, or file his Bail in these Cases, by Rules given in the Bill of Pleas: And when the Bail is put in, if the Plaintiff makes no Exception before twenty Days end, so that it stands absolute; he must file his Original, and declare within two Terms after the Bail given, or else the Bail is not liable. Upon a Cause removed by *Habeas Corpus*, if Judgment be given for the Plaintiff, the Costs below are to be considered and cast into the Judgment; if for the Defendant, the Charge of putting in Bail.

A

A Writ of Habeas Corpus *to the Sheriffs of* London.

GEORGE the Second, *&c.* To the Mayor, Aldermen, and Sheriffs of our City of *L.* Greeting: We command you, and every of you, that ye have before our Juſtices at *Weſtminſter* immediately after the Receipt of this Writ, (and if it be returnable before the Lord Chief Juſtice, or any other of the Judges at his Chambers) or before Sir *Robert Eyre*, Knt. our Chief Juſtice, or Sir *John Forteſcue Aland*, one of our Juſtices of our Court of Common Pleas, at his Chambers ſituate in, *&c.* the Body of *A. B.* who is ſaid to be detained in our Priſon, under your Cuſtody, by whatſoever Name he ſhall be reputed in the ſame, together with the Day and Cauſe of taking and detaining the ſaid *A. B.* to do and receive that which our Court ſhall conſider of in this Caſe: And have you there this Writ. Witneſs, *&c.*

When the Writ of *Habeas Corpus* is returnable at a general Return, then it is inſerted as the Return is, viz. *On the Octave of the Purification of the Bleſſed Virgin* Mary, *&c.*

A Habeas Corpus *after a* Cepi Corpus.

GEORGE the Second, *&c.* To the Sheriff of *S.* Greeting: We command you, that you have before our Juſtices at *Weſtminſter*, *on the Octave of the Purification of the Bleſſed Virgin* Mary,

Mary, the Body of *A. B.* whom you took by Virtue of our Precept, and now detain in your Cuſtody, as you your ſelf have returned to our Juſtices at *Weſtminſter* on the Octave of St. *Hilary* laſt paſt, to anſwer to *C. D.* of a Plea that he render to him Thirty Pounds, which he owes to and unjuſtly detains from him, as it is ſaid; and have you there this Writ. Witneſs, *&c.*

As to *Privilege*, the Clerk of the Warrants is to certify that an Attorney's Name is upon the Roll of Attornies, before he ſhall have Writ of Privilege: And Writs of Privilege, Attachments, *&c.* are to be ſigned by the Clerk of the Warrants, or his Deputy, to ſhew that ſuch Perſon is an Attorney of this Court duly entered and continued on the ſaid Roll of Attornies; or ſuch Writs ſhall not be of Force to free the Parties from Arreſts, or to require Bail, or give any Privilege whatſoever. *Ord. Trin.* 29 *Car.* 2. and 9 *W.* 3.

The uſual Courſe where an Attorney or Clerk of this Court is Plaintiff in an Action, is to ſue out an *Attachment of Privilege* againſt the Defendant: And an Attorney may chuſe whether he will ſue or be ſued out of the County of *Middleſex*, becauſe his Attendance is always ſuppoſed to be there. If any Attorney ſue here for his Fees, *&c.* and lay his Action in *Middleſex*, the Court will not alter the *Venue*, altho' the Cauſe he was retained in were in another County: The Statute of Limitations cannot be pleaded to an Attorney's Bill; but by the late Act 3 *Geo.* 2. no Attorney can ſue his Client for Buſineſs done for him, 'till one Month after the Delivery of his Bill.

If

If an Attorney be Defendant, the Method of Proceeding againſt him is to draw the Declaration, and ingroſs it on a Double Penny ſtamp'd Piece of Parchment; which in the beginning at Top is directed, *To the Juſtices of the Common Bench of our Sovereign Lord the King*: And it ends with praying to be relieved, *&c.* and not therefore he brings his Suit; for here is no Suit till Appearance, and the Bill is only to compel the ſame. The Plaintiff's Attorney delivers this Bill to one of the Criers of the Court, who calls the Attorney Defendant by his Name, and proclaims aloud, that if ſuch Attorney does not appear to the Bill, he will be *Forejudged*; the Meaning of which is, that he will be ſtruck out of the Roll of Attornies, and then he ſtands Unprivileged by the Court, and may be arreſted as any other Perſon: And when the Crier hath ſo called ſuch an Attorney, the Bill is delivered to the Secondary, who gives a Rule thereupon, that if he do not appear, he will ſtand forejudged; after which this Bill is to be carried to the Prothonotary's Office, and there filed and entered; and if the Attorney appears not in four Days, then the Bill is entered upon a Roll of that Term, which being carried to the Clerk of the Warrants and Inrollments, he thereupon ſtrikes ſuch Attorney out of the Roll.

But an Attorney thus forejudged may be *Reſtored*, on clearing himſelf from what is laid to his Charge, and his Contumacy in not appearing when he was ſolemnly called; and there are Inſtances of reſtoring Attornies forejudged, upon Payment of a ſmall Fine: The Method of an Attorney's being reſtored is, when the Attorney hath made Satisfaction to the Plaintiff; or

if he appears, and will controvert the Suit, he muſt Summon the Plaintiff's Attorney before a Judge, to ſhew Cauſe why he ſhould not be reſtored; and on their attending the Judge, if it appears to him, that the Plaintiff hath had Satisfaction, or the Matter in Diſpute is ſuch, as the Attorney may be admitted to controvert it, he will make an Order to the Clerk of the Warrants and Inrollments, to replace him in the proper Roll of Attornies, who does it without any Entry.

This is the uſual Way of Reſtoring an Attorney to his Privilege; but if ſuch Attorney be arreſted by any other Perſon, and he pleads his Privilege, and the Plaintiff replies that he is forejudged, and Iſſue be taken thereon, it is then proper that this Entry be made. If you arreſt an Attorney before he is forejudged, he may diſcharge himſelf by *Superſedeas*.

An Attachment of Privilege *in* C. B.

GEORGE the Second, *&c.* To the Sheriff of *D.* Greeting: Attach *A. B.* (or others as in the Writ) ſo that you have him before our Juſtices at *Weſtminſter* on the Day, *&c.* to anſwer to *T. W.* Gent. one of the Attornies of our Court of Common Bench, according to the Liberties and Privileges of our ſaid Court, for ſuch like Attornies of the ſame Bench uſed and approved of in the ſame, for ſo long Time as the Memory of Man is not to the contrary, in an Action of Treſpaſs upon the Caſe; and have you there this Writ. Witneſs, *&c.*

A Declaration *for an Attorney of this Court.*

Dorſet, ſſ. A. B. late of, *&c.* in the County aforeſaid, was attached by Writ of the Lord the King of Privilege, iſſuing out of this Court, to anſwer to *T. W.* Gent. one of the Attornies of his Majeſty's Court of Common Bench, according to the Liberties and Privileges of the ſaid Bench, Time out of Mind uſed and approved of, in an Action of Treſpaſs upon the Caſe: And whereupon the ſaid *T.* complains, That whereas, *&c.* (ſo go on with the Declaration to the End.)

The Pledges for the Proſecution are { *John Doe.* *Richard Roe.*

A Writ of Superſedeas *for an Attorney.*

GEORGE the Second, *&c.* To our Juſtices aſſigned to hold Pleas before us: Whereas it hath been made manifeſt to us on the Behalf of *T. W.* that he is an Attorney of our Court of Common Bench, and is proſecuting and defending divers Affairs and Suits of many of our Liege People, as their Attorney of our ſaid Bench; and the ſaid *T.* and all other Attornies of the ſame Bench, while they are ſo proſecuting and defending any Affairs in the ſaid Bench, ſhould and ought to be under our Protection, according to the Liberties and Privileges of our ſaid Court of Common Bench, Time out of Mind there uſed and approved of: Nevertheleſs

C. D. Gent. not being ignorant of the Liberties and Privileges of the ſaid Bench, ſued out in our Court before us, a certain Bill for a Treſpaſs committed by the ſaid *T.* againſt the ſaid *C.* as he aſſerted at, *&c.* in our County of *S.* in Contempt of our ſaid Court of Common Bench; and to the great Damage of the ſaid *T.* and ſeveral of our Liege People whoſe Attorney he is, as we are informed. Therefore we command you, that you totally ceaſe from proceeding upon whatſoever Plaints and Pleas are depending in our Court before you, againſt the ſaid *T.* (Pleas of Freehold, Felonies and Appeals only excepted) informing the Parties in the ſaid Complaints and Pleas on our Behalf, that they may proſecute their Plaints and Pleas in our Court before our Juſtices of the Common Bench, if they think fit. Witneſs, *&c.*

A Certiorari *for an Attorney of the* Common *Pleas.*

GEORGE the Second, *&c.* To the Mayor, Aldermen and Sheriffs of *L.* Greeting: We command you, that you have before our Juſtices at *Weſtminſter*, on *Monday* next after, *&c.* all and all manner of Cauſes, Complaints, and Demands, levied, ſued out and depending before you or either of you, againſt *T. W.* one of the Attornies of our Court of Common Bench, together with the Days of levying the ſame; ſo that our ſaid Juſtices may upon viewing thoſe Cauſes, be able to do full and compleat Juſtice to the ſaid *T. W.* according to the Liberties and Privileges for ſuch Attornies, Time out of Mind uſed and approved of in our Court of Common

Bench; and have you there this Writ. Witness, &c.

A Declaration *upon a* Bill filed *against an Attorney.*

IT is to be Remembered, that the Day, &c. in this same Term, *C. D.* by &c. his Attorney came into this Court, and exhibited to the Justices of the Lord the King a certain Bill against *J. R.* Gent. an Attorney of his Majesty's Court of Common Bench, being present here in Court in his proper Person, of a Plea of Trespass upon the Case, &c. the Tenor of which said Bill follows in these Words, *viz.* To the Justices of the Common Bench of the Lord the King, *C. D.* by, &c. his Attorney complains of *J. R.* one of the Attornies of the Court of Common Bench of our Sovereign Lord the King, present here in Court in his proper Person; for that Whereas, &c. (going on with the Declaration to the Words) and whereupon the said *C. D.* declares he is injured and has Damage to the Value of Twenty Pounds; and therefore he prays Relief, &c.

Entry of a Forejudger *of an Attorney of* C. B.

BE it remember'd, that on the Day of, &c. this same Term, *C. D.* came here into this Court by, &c. his Attorney, and exhibited to the Justices of our Sovereign Lord the King, his Bill against *J. R.* Gent. one of the Attornies of

the Common Bench of our ſaid Sovereign Lord the King, perſonally preſent here in Court; the Tenor of which Bill follows in theſe Words, that is to ſay, To the Juſtices of our Sovereign Lord the King, *ff. C. D.* by, *&c.* his Attorney, complains of *J. R.* one of the Attornies of the Common Bench of our ſaid Sovereign Lord the King, perſonally preſent here in Court; for that whereas the ſaid *J. R. &c.* (and ſo go on with the Bill, ending with the Words, and thereupon he prays Relief, *&c.*) the Pledges for the Proſecution are *John Doe*, and *Richard Roe*: Whereupon the ſaid *J. R.* being ſolemnly called came not, or did not appear; therefore he is forejudged from exerciſing his Office of Attorney of this Court, for his Contumacy, *&c.*

An Entry for Reſtoring an Attorney *forejudged.*

AFterwards, (that is to ſay) on the Day, *&c.* in the Year of the Reign, *&c.* the ſaid *J. R.* came here into this Court, and having made Payment of his Fine of, *&c.* to our Sovereign Lord the King, by Reaſon of the Premiſſes, the ſame being this Inſtant paid into this Court into the Hands of, *&c.* and for that the ſaid *J. R.* prays that he may be thereof freed and diſcharged: Thereupon he the ſaid *J. R.* at his ſpecial Inſtance and Requeſt made to the Juſtices here, is again permitted and reſtored to exerciſe his ſaid Office as an Attorney of the Common Bench, and readmitted to that Office.

There is an *Attachment of Contempt* againſt Attornies, for not paying Coſts, &c. and when an Attorney is taken on this Attachment, he gives a Bail-Bond to the Sheriff, and at the Return of the Writ perſonally appears in Court; and then he enters into a Recognizance to appear from Day to Day, 'till the Court ſhall determine concerning the Matters objected againſt him: Then upon Motion by his Counſel, the Court makes a Rule, that unleſs his Adverſary exhibits Interrogatories againſt him in four Days from ſuch Rule, he ſhall be diſcharged.

The Interrogatories being exhibited, muſt be filed with the Secondary of that Office where the Cauſe is, and by him the Defendant is to be examined, being firſt ſworn before a Judge; and the Tenor of his Examination is drawn by the Secondary, whereupon if the Prothonotary makes a Report that he is in Contempt, the Court commits him to the Fleet Priſon; or if he is reported Innocent, they diſcharge him. If he neglects to appear to be examined, or doth not attend the Court when he is directed to come, the Court will order his Recognizance to be eſtreated.

And here it is to be obſerved, if he confeſſes any thing material in his Depoſitions, there is no Occaſion for Witneſſes, but you may move on his Confeſſion: Though if the Proſecutor who takes out Copies of the Depoſitions, finds his Charge denied, he brings up his Witneſſes to prove the Contempt *viva voce* in Court; and if the Court judges him guilty, they ſend him to the Fleet.

These Attachments are never granted, but on Affidavit and Motion, nor until a *Nisi causa* Rule be served, *&c.*

An Attachment against an Attorney for *Contempt.*

GEORGE the Second, *&c.* Attach *J. R.* one of the Attornies of our Court of Common Bench, so that you have him before our Justices at *Westminster*, on the Day, *&c.* to make Answer to Us, of and concerning those things, which shall then on our Behalf be objected against him; and have you there this writ. Witness, *&c.*

A Commitment *to the Fleet Prison.*

AFterwards, that is to say, on the Day of, *&c.* in the Ninth Year of the Reign of our Sovereign Lord *George* the Second, King of *Great Britain*, *France* and *Ireland*, Defender of the Faith, *&c.* the said *A. B.* personally comes here into this Court; and hereupon the said *A.* is committed to his said Majesty's Prison of the Fleet, by reason of the Premisses, there to remain until he shall from thence be discharged in due Form of Law.

Of Proceedings in Aſſiſes and Formedons, Dower and Partition, Waſte, Replevins, and Homine Replegiando's, Quare Impedits, &c. in C. B.

I have in the Beginning of this Work in my Introduction of the *Nature* and *Law* of all Manner of *Actions*, given an Account of the Particular Laws concerning the Titles I am now come to, and how to proceed thereupon in great Variety of Caſes; ſo that in this Place I ſhall only inſert the ſeveral *Forms* and Precedents of theſe Proceedings, with which I conclude my *Engliſh* Law-Practice.

A Writ of Aſſiſe *of* Novel Diſſeiſin.

GEORGE the Second, *&c.* To the Sheriff of L. Greeting. *A. B.* hath complained to us, that *C. D.* unjuſtly and without Judgment hath diſſeiſed him of his Freehold in *G.* within Thirty Years now laſt paſt; and therefore we command you, that if the ſaid *A.* makes you ſecure in proſecuting his Claim, then that you cauſe that Tenement to be re-ſeiſed and the Chattels which in it were taken, and the ſame Tenement with its Chattels to be in Peace until the next Aſſizes, when our Juſtices into thoſe Parts ſhall come; and in the mean Time, that you cauſe Twelve Free and lawful Men of that Venue to view the ſaid Tenement, and their Names to be imbreviated, and Summon them by good Summoners, that they be before our ſaid Juſtices

ſtices at the aforeſaid Aſſizes, ready thereof to make Recogniſance; and put by Sureties and ſufficient Pledges the aforeſaid *C.* or his Bailiff, if he ſhall not be found, that he then be there to hear that Recognizance: And have you there the Summoners, the Names of the Pledges, and this Writ. Witneſs our ſelf at *Weſtminſter*, *&c.*

A Declaration, *with the* Tenant's Anſwer, *and* Judgment *in Aſſiſe.*

Lincolnſhire, ſſ. THE Aſſiſe come to Recognize, whether *C. D.* unjuſtly and without Judgment diſſeiſed *A. B.* of his Freehold in *G.* within Thirty Years laſt paſt, *&c.* and whereupon the ſaid *A.* by *T. V.* his Attorney complains, that he the ſaid *C.* did diſſeiſe him of Twenty Pounds Rent, with the Appurtenances, iſſuing out of One Meſſuage or Tenement with the Appurtenances in *G.* aforeſaid, *&c.* And for his Title to the Tenement and Aſſiſe of the Rent aforeſaid, the ſame *A.* ſaith, that *T. B.* Father of him the ſaid *A.* long before the obtaining of the Original Writ of Aſſiſe aforeſaid, was ſeiſed of the Meſſuage aforeſaid with the Appurtenances, in his Demeſne as of Fee, and being ſo thereof ſeiſed, the Day and Year, *&c.* at *G.* aforeſaid, by his certain Indenture, made between him the ſaid *T.* of the One Part, and, *&c.* of the other Part, which other Part thereof with the Seal of the ſaid *T.* affixed thereto and by him ſigned, the ſaid *A.* here in Court ſhews forth, the Date whereof is the ſame Day and Year above, he for himſelf his

Heirs and Aſſigns did covenant, grant, promiſe and agree to and with the ſaid, &c. (here reciting a Deed of Covenants to levy a Fine of the Meſſuage among other Things to Truſtees to the Uſe of the ſaid *T. B.* and his Heirs, &c. ſubject to the Payment of the Rent of 20 *l.* aforeſaid to the ſaid *A.* during his Life, &c. and the Fine levied accordingly). And the ſaid *A.* further ſaith, that after the Levying of the Fine aforeſaid, and before the Day of Purchaſing the Original Writ of Aſſiſe aforeſaid, that is to ſay, the Day, &c. in the Year, &c. he came to the Meſſuage aforeſaid, and then and there, according to the Form and Effect of the Indenture aforeſaid, claimed of the aforeſaid *C. D.* Tenant of the Freehold of the Meſſuage aforeſaid with the Appurtenances, the aforeſaid Rent of Twenty Pounds, which he the ſaid *C.* to the ſaid *A.* afterwards, and before the Day of obtaining the Original Writ of Aſſiſe aforeſaid, at *G.* aforeſaid, did twice pay, whereby the ſaid *A.* was ſeiſed of that Rent with the Appurtenances, during his Life; and becauſe Sixty Pounds of the Rent aforeſaid, for Three Years ending at the Feaſt of, &c. in the Year of the Reign, &c. to the ſaid *A.* after the Fine aforeſaid in Form aforeſaid levied, were in arrear and not paid, the ſaid *A.* afterwards, and before the Day of the purchaſing of the Original Writ aforeſaid, that is to ſay, the Day, &c. in the Year, &c. came to the Meſſuage aforeſaid with the Appurtenances, between the Hours of Ten and Eleven in the Forenoon of the ſame Day, and then and there demanded the aforeſaid Sixty Pounds of the Rent aforeſaid, in Form aforeſaid being in Arrear, to be paid unto him; but becauſe no Man

would then and there pay the ſaid Sixty Pounds to the ſaid *A.* he the ſaid *A.* would have entered into the Meſſuage aforeſaid to diſtrain for the ſame; but the Door of the ſaid Meſſuage was then ſhut with a Lock againſt him the ſaid *A.* ſo that the ſaid *A.* could not enter therein to diſtrain for the Rent aforeſaid, by Reaſon of the Shutting of the Door aforeſaid: And ſo the ſaid *C.* him the ſaid *A.* thereof unjuſtly, and without Judgment did diſſeiſe; and this he is ready to verify; whereupon he prays the Aſſiſe, *&c.*

And the ſaid *C.* by *W. H.* his Attorney comes and ſays, That there is not any Tenant of the Meſſuage or Tenement aforeſaid, whereout it is alledged the Rent aforeſaid iſſues to be put in View of the Recognitors of the Aſſiſe, in the Plaint or Declaration aforeſaid ſpecified, as of the Freehold in the Writ aforeſaid mentioned; nor was the Day of obtaining of the original Writ of Aſſiſe aforeſaid, that is to ſay, the Day, *&c.* in the Year, *&c.* of the Lord the King that now is, or at any Time afterwards; and this he is ready to prove; whereupon he prays Judgment of that Writ, *&c.* And if, *&c.* then the ſame *C.* ſaith, that he did no Wrong or Diſſeiſin to the aforeſaid *A.* as the ſaid *A.* by his Writ and Plaint above hath ſuppoſed; and of this he puts himſelf upon the Aſſiſe, and the aforeſaid *A.* likewiſe: Therefore let the Aſſiſe thereof between them be taken; and the Recognitors of the Aſſiſe aforeſaid being called, ſome of them came, and ſome of them did not come, as in the Panel appeareth, *&c.* and therefore the Aſſiſe aforeſaid remains to be taken here until the Day of, *&c.* next coming, for want of Recognitors,

and

and the Sheriff then to have the Bodies of the Recognitors, &c. and in the mean time, &c. the ſame Day is given to the Parties aforeſaid there, &c. At which Day here, that is to ſay, at, &c. aforeſaid, came as well the aforeſaid *A.* as the aforeſaid *C.* by their Attornies aforeſaid; and hereupon the Recognitors of the Aſſiſe aforeſaid impanelled, being called, likewiſe appeared, who to ſpeak the Truth of the Premiſſes, being choſen, tried and ſworn, ſay upon their Oath, that the ſaid *C.* was Tenant of the Meſſuage whereout the Rent aforeſaid iſſues to be put in View of the Recognitors of Aſſiſe aforeſaid, in the Plaint aforeſaid ſpecified, the Day of purchaſing the Original Writ of the ſame Aſſiſe; and that the ſaid *A.* was ſeiſed of the Rent aforeſaid, with the Appurtenances, as he in his Title hath alledged and ſet forth, until the ſaid *C.* him the the ſaid *A.* thereof unjuſtly and without Judgment (but not with Force or Arms) did Diſſeiſe, as the ſaid *A.* hath above alledged: And further the Recognitors aforeſaid ſay upon their Oath, that the aforeſaid Rent of Twenty Pounds to the ſaid *A.* was in arrear for Three Years next before the Day of obtaining of the Original Writ of Aſſiſe aforeſaid, (that is to ſay) the Day and Year, &c. aboveſaid, which ſaid Arrears amount to Sixty Pounds; and they do aſſeſs the Damages of him the ſaid *A.* by Occaſion of the Premiſſes, above the Arrears aforeſaid, and beſides his Expences and Coſts, by him about his Suit in this Behalf laid out, to forty Shillings, and for theſe Expences and Coſts, &c. And becauſe the aforeſaid Juſtices will adviſe of and upon the Premiſſes, before they give Judgment thereof, Day is given to the Parties afore-

aforesaid, before the said Justices at, &c. until the Day, &c. next coming, of hearing their Judgment, for that the same Justices here thereof not being as yet, &c.

At which said Day here (that is to say) at *Westminster*, &c. aforesaid, before the same Justices, come as well the said *A.* as the said *C.* by their Attornies aforesaid, and the Premisses being seen, and by the said Justices fully understood; therefore it is considered, that the said *A.* do recover his Seisin of the aforesaid Rent of Twenty Pounds, and the Arrears aforesaid, in Form aforesaid found in Arrear, and his Damages and Expences against the said *C.* by the Recognitors aforesaid, in Form aforesaid assessed, and also seventeen Pounds at his Request for his Expences and Costs aforesaid by the Court here of Increase adjudged, which said Arrears and Damages in the whole amount to, &c. and the aforesaid *C.* is in Mercy, &c.

Entry of Pleadings, *&c. in Action of Assise.*

PLeas of Assises at the Castle of *L.* in the County of *C.* before Sir *E. P.* Knt. one of the Justices of the Lord the King assigned to hold Pleas before the King himself, and *A. D.* Esq; one of the Justices of the Lord the King of the Bench, Justices of the said Lord the King, assigned to take Assises in the County aforesaid, by Form of the Statute, &c. on *Monday* the Day of, &c. in the Eighth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, King of *Great Bri-*

Britain, France and *Ireland*, Defender of the Faith, &c.

A Formedon in Descender, *and Recovery thereon.*

Essex, ss. A. B. by, &c. his Attorney demands against *C. D.* one Messuage, One Garden and Two Acres of Land, with the Appurtenances in *W.* which *L. B.* gave to *J. B.* his Son, and the Heirs of his Body begotten, and which after the Death of the said *J. B.* the Son of *L. B.* to the said *A.* Son and Heir of the said *J.* Son of the said *L.* ought to descend, by Form of the Gift, &c. and whereupon he saith, that the said *L.* by his Deed of Gift or Feoffment made the Day and Year, &c. gave the Tenements aforesaid, with the Appurtenances to the said *J.* his Son, and the Heirs of his Body to be begotten in Form as aforesaid; by which Gift the said *J.* the Son of the said *L.* was seised of the Tenements aforesaid, with the Appurtenances, in his Demesne as of Fee and Right, by Form of, &c. in the Time of Peace, in the Reign of *George* the First, late King of *Great Britain*, taking thereof the Profits to the Value, &c. and from the same *J.* descendeth the Right, by the Form, &c. to the said *A.* who now demands as Son and Heir of the Body of the said *J.* and which after the Death, &c. and thereupon he brings his Suit, &c.

And the said *C.* by, &c. his Attorney comes and defends his Right, when, &c. and vouches thereof to Warrant *E. D.* summoned in the County

County aforesaid, that he be here the Day, &c. by the Aid of the Court, &c. the same Day is given to the Parties aforesaid here, &c. At which Day the said *C.* by, &c. his Attorney, offered himself against the said *E. D.* of a Plea, that he should be here at this Day, to wit, the Day, &c. to warrant to the same *C.* One Messuage, One Garden, and Two Acres of Land, with the Appurtenances in *W.* aforesaid; which *A. B.* in the Court of the Lord the King here claims as his Right against the said *C.* by Writ of the said Lord the King, *de forma Donationis in descendre*, &c. and whereupon the same *C.* in the said Court of the said Lord the King here called the same *E.* who was summoned in the County aforesaid, to warrant him, and he came not, &c. Therefore Judgment, that the Lands of the said *E.* be taken into the Hands of the Lord the King, to the Value, &c. and whereupon, &c. and Day given, &c. and let him be summoned, that he be here in, &c. The same Day is given as well to the said *A. B.* who now appears by his Attorney, as to the same *C. D.* here, &c.

At which Day here came as well the said *A.* as the said *C.* by their Attornies aforesaid, and the Sheriff sent not the Writ: Therefore as before, let the said Tenements be taken into the Hands of the Lord the King; and the same *E.* as before be summoned, that he be here on, &c. The same Day is given to the Parties aforesaid here, &c. At which said Day, here came as well the same *A.* as the said *C.* by their Attornies aforesaid, and also the said *E.* by, &c. his Attorney, and the Sheriff now here certifies the Day of the Caption, &c. And that he took into the

the Hands of the ſaid Lord the King, the Lands of the ſaid *E.* to wit, One Barn, and Four Acres of Land, with the Appurtenances, in *W.* aforeſaid, to the Value of the Tenements aforeſaid; and that he ſummoned, *&c.* and hereupon the ſaid *C.* preciſely betaketh himſelf to the ſaid Default, which the ſaid *E.* made here at the ſaid, *&c.* and prayeth Seiſin of the Tenements aforeſaid, with the Appurtenances for that Default, to him to be adjudged, *&c.*

And the ſame *E.* ſaith, that the Default aforeſaid made ought not to injure him in this Behalf, becauſe he ſaith, that he was never ſummoned by the Law of the Land, to be here at the ſaid Day, *&c.* to anſwer the ſaid *C.* in the ſaid Plea; and this he is ready to defend againſt him, and his Suit, as the Court here ſhall conſider of in the Premiſſes: And therefore it is conſidered, that the ſaid *E.* do thereof Wage his Law *ſe duodecima manu*, Pledges of Law, to wit, *John Doe* and *Richard Roe*, and let him come with his Law here the Day, *&c.* And it is ordered, that the ſaid Attorney of the ſaid *E.* then have here the ſaid *E.* his Client in proper Perſon, to do his Law aforeſaid, if, *&c.* The ſame Day is given to the ſaid *A. B.* and *C. D.* here, *&c.*

At this Day, came as well the ſaid *A. B.* as the ſaid *C. D.* by their Attornies aforeſaid, and the ſaid *C.* offered himſelf the Fourth Day againſt the ſame *E.* of the Plea aforeſaid, that he ſhould be here this Day, to do his Law aforeſaid, as the ſame he hath above waged; and the ſaid *E.* being ſolemnly called came not, but made Default. Therefore it is conſidered by the Court of the Lord the King here, that the ſaid

A.

A. recover his Seisin against the said *C.* of the Tenements aforesaid, with the Appurtenances above against the same *C.* demanded; and that the said *C.* recover his Seisin against the said *E.* of the Tenements aforesaid, with the Appurtenances, in, *&c.* and the said *E.* in Mercy, *&c.*

And hereupon the said *A.* prays the Writ of the said Lord the King, to be directed to the Sheriff of the County aforesaid, to cause to be delivered to him full Seisin of the Tenements aforesaid with the Appurtenances, in *W.* aforesaid, and it is granted to him, returnable here, *&c.*

A Declaration in Warrantia Chartæ, *and the Judgment therein.*

Somerset, ss. A. B. was summoned to answer *C. D.* of a Plea, that he Warrant to him Two Messuages, and Twenty Acres of Land with the Appurtenances, in *P.* which he holdeth, and claimeth to hold of him, and whereof he hath his Deed, *&c.* And whereupon the said *C.* in his proper Person saith, that whereas the said *A.* was seised of the Tenements aforesaid, with the Appurtenances, in his Demesne as of Fee, and being so thereof seised, by his certain Deed, which the same *C.* brings here into Court, whose Date is the, *&c.* Gave, granted, and by the said Deed confirmed to the said *C.* the Tenements aforesaid, with the Appurtenances, among other Things, by the Name of, *&c.* to have and to hold to the said *C.* his Heirs and Assigns for ever, and bound himself and his Heirs to warrant to the same *C.* his Heirs and Assigns, the Tenements aforesaid, with the Appur-

purtenances, againſt all Men for ever, by the ſaid Deed, as by the ſame Deed more fully appears: By Virtue of which Gift, Grant, and Confirmation, the ſaid *C.* was ſeiſed of the Tenements aforeſaid, with the Appurtenances, in his Demeſne as of Fee; and being ſo thereof ſeiſed, one *E. D.* arraigned and brought againſt him the ſaid *C.* a certain *Aſſiſe of Novel Diſſeiſin* of the Tenements aforeſaid, with the Appurtenances, before Sir *F. P.* and Sir *J. F.* Juſtices of the Lord the King, aſſigned to take the Aſſiſes in the County aforeſaid; which ſaid Aſſiſe then and there depending, the ſaid *C.* oftentimes requeſted the ſaid *A.* that he would warrant to him the ſaid *C.* the Tenements aforeſaid, with the Appurtenances. Nevertheleſs the ſaid *A.* hath hitherto denied to warrant to the ſaid *C.* the Tenements aforeſaid, with the Appurtenances, and ſtill denieth to do the ſame; whereupon he ſaith that he is the worſe, and hath Damage to the Value of Twenty Pounds; and thereof he brings his Suit, *&c.*

And the ſaid *A.* in his proper Perſon comes and Defends the Force and Injury, when, *&c.* and ſaith, that he cannot deny the Action aforeſaid of the ſaid *C.* nor but that the ſaid Deed is the Deed of the ſame *A.* and that he by the ſame Deed gave and granted to the ſaid *C.* the Tenements aforeſaid, with the Appurtenances; nor but that he is held to warrant to the ſaid *C.* the ſaid Tenements, with the Appurtenances, in Manner and Form as the ſaid *C.* above againſt him Complains: Therefore it is conſidered, that the ſaid *A.* warrant to the ſaid *C.* the Tenements aforeſaid, with the Appurtenances, for the Time and Place, *&c.* and nothing of Mercy,

Mercy, of the said *A.* because he came the First Day upon Summons, *&c.*

A Count in Dower, with divers Pleadings, Judgment and Writ of Seisin.

Wilts, ss. E. B. Widow, who was the Wife of *T. B.* by, *&c.* her Attorney, demands against *J. B.* the Third Part of Five Messuages, One Hundred Acres of Land, Thirty Acres of Meadow, and Forty Acres of Pasture, with the Appurtenances, in *M.* as the Dower of the said *E.* of the Indowment of the said *T.* her late Husband, by Writ of the said Lord the King of Dower, whereof she hath nothing, *&c.* and the said *J. B.* by, *&c.* his Attorney, comes and prays the View of the Tenements aforesaid, with the Appurtenances, whereof, *&c.* and hath it, *&c.* the same Day is given to the said Parties here until, *&c.* and in the mean time, *&c.* and now at this Day, to wit, at the said, *&c.* came the said *E.* by her Attorney aforesaid and the said *J.* the Fourth Day of the Plea being solemnly called came not, but made Default: Judgment that the Third Part of the Tenements aforesaid, with the Appurtenances, be taken into the Hands of the King that now is, and the said *J.* be summoned, that he be there the Day, *&c.* to hear thereof his Judgment, *&c.* at which Day here comes the said *E.* by her Attorney aforesaid, and the Sheriff now returns, that he hath done nothing thereupon, nor sent his Writ; therefore as before, let another Writ thereof be made unto him returnable here on, *&c.* at which said

Day

Day here came the ſame *E.* by her Attorney aforeſaid; and the Sheriff now returneth, that he hath done nothing thereupon, nor ſent his Writ thereof; therefore as before, let another Writ thereof be made unto him, returnable here, *&c.* At which Day here came the ſaid *E.* by her ſaid Attorney, and offered herſelf the Fourth Day againſt the ſaid *J.* of the ſame Plea; and he being ſolemnly called came not, and the Sheriff now teſtifieth the Day of the Caption, *&c.* and that he ſummoned, *&c.* whereupon the ſaid *E.* prays Judgment, and her Seiſin of the Third Part aforeſaid, with the Appurtenances, for that Default to be adjudged to her, *&c.*

And hereupon came into Court one *F. G.* in his proper Perſon, and ſaith, that the ſaid *T.* late Husband, *&c.* before Eſpouſals between him and the ſaid *E.* were celebrated, was ſeiſed of the Tenements aforeſaid, with the Appurtenances, whereof, *&c.* in his Demeſne as of Fee; and being ſo thereof ſeiſed, one *H. J.* Gent. afterwards, to wit, in *Michaelmas* Term, in the Year of the Reign, *&c.* to wit, on the Day, *&c.* in the ſame Term, before the Lord the King at *Weſtminſter* in the County of *M.* by, *&c.* then his Attorney, came and brought into the Court of the ſaid Lord the King then and there, his certain Bill againſt the ſaid *T.* in his Life-time, by the Name of *T. B.* Gent. otherwiſe called, *&c.* in the Cuſtody of the Marſhal of the ſaid Lord the King, in the Court of the ſaid King being, by which ſaid Bill the ſaid *H.* then complained againſt the ſaid *T.* of a Plea that he ſhould render to him One Hundred Pounds, *&c.* (reciting a Declaration on a Bond to the End) and thereof he brought his Suit, *&c.* and the ſaid

T. by, *&c.* his then Attorney came and ſaid, that he could not deny, but that the ſaid Bond or Writing obligatory was his Deed, nor but that he owed to the ſaid *H.* the ſaid One Hundred Pounds, in Manner and Form as the ſaid *H.* above againſt him had declared; wherefore it was then conſidered by the ſaid Court of the ſaid Lord the King, that the ſaid *H.* ſhould recover againſt the ſaid *T.* (then being ſeiſed of the Tenements aforeſaid with the Appurtenances whereof, *&c.*) his ſaid Debt, and alſo, *&c.* for his Damages, which he hath ſuſtained, as well by Occaſion of the Detaining of the ſaid Debt, as for his Coſts and Charges by him about his ſaid Suit in that Behalf laid out and expended, to the ſaid *H.* by the ſame Court of the ſaid Lord the King by his Aſſent adjudged; and that the ſaid *T.* ſhould be in Mercy, *&c.* and afterwards, to wit, the Day of, *&c.* in the Year, *&c.* the ſaid *H.* in the ſaid Court of the ſaid Lord the King, before the ſame King at *Weſtminſter* aforeſaid, by his then Attorney, according to the Statute, made his Election to be delivered to him all the Goods and Chattels of the ſaid *T.* except his Oxen and Beaſts of the Plough; and alſo the One Half of all his Lands and Tenements, *&c.* to hold to him and his Aſſigns, according to the Form of the Statute aforeſaid, until the Debt and Damages aforeſaid, ſhould be fully levied; and then prayed thereof a Writ of *Elegit*, of the ſaid Lord the King, to be directed to the ſaid Sheriff of *W.* and it was granted to him, returnable before the ſaid Lord the King at *Weſtminſter* on, *&c.* then next following, *&c.* at which Day, before the Lord the King at *Weſtminſter*, came the ſaid *H.* by his ſaid then Attorney, and

N. S. Esq; then Sheriff of the County of *W.* then and there returned a certain Inquisition taken before him at, *&c.* the Day, *&c.* by the Oath of Twelve, *&c.* by which it was found, that the said *T.* the said Day of, *&c.* aforesaid, was seised in his Demesne as of Fee of and in One Messuage lying and being in, *&c.* of the clear Yearly Value, *&c.* and also of and in one other Messuage, with the Appurtenances, situate and lying in, *&c.* and also of and in one other Messuage called, *&c.* lying, *&c.* and the Moiety of all the Lands and Tenements aforesaid, the said Sheriff caused to be delivered to the said *H.* to hold to him and his Assigns, according to the Form of the Statute, as his Freehold, until the Debt and Damages aforesaid shall be fully levied, as the said Writ did command and require, *&c.* and the said *F. G.* saith, that the Tenements aforesaid, with the Appurtenances, whereof, *&c.* are Parcel of the said Tenements, with the Appurtenances, by the Inquisition aforesaid above as aforesaid found; and that the same Tenements, with the Appurtenances, to the said *H.* by the said Sheriff in Form aforesaid delivered, and the Tenements, with the Appurtenances, whereof, *&c.* are one and the same Tenements and no other, nor divers: By reason whereof the said *H.* into the Tenements aforesaid, with the Appurtenances, whereof, *&c.* entered, and was thereof possessed, and being so possessed thereof, the said *H.* afterwards, to wit, the Day of, *&c.* in the Year, *&c.* at *M.* aforesaid, granted his whole Right, Estate, Title and Interest, which he had of and in the Tenements aforesaid, with the Appurtenances, whereof, *&c.* to the said *F. G.* by Virtue of which Grant, the said *F. G.* into

the Tenements aforesaid, with the Appurtenances, whereof, &c. entered, and was and yet is thereof possessed: And the said *F.* further saith, that the said *E.* impleaded the said *J.* of and for the Third Part aforesaid, with the Appurtenances, whereof, &c. and the said *J.* here in Court made Default, by Fraud and Collusion between the said *E.* and the said *J.* with Intent wholly to deceive and defraud the said *F. G.* of and in the Third Part of the Tenements aforesaid, with the Appurtenances, whereof, &c. And this he is ready to verify: Whereupon, for that the said *F.* came here into the Court before Judgment of the said Third Part was given, to answer the said *E.* therein, and to defend his Right, the same *F.* saith, that for that Default by Fraud and Collusion aforesaid, in Form aforesaid had, he from his Right of and in the Third Part aforesaid, ought not to be dismissed, but that he to the Defence of his Right therein ought to be admitted, &c. with this, that the said *F.* will aver that the aforesaid *H.* of the Debt and Damages aforesaid is not yet satisfied, &c.

And the said *E.* saith, that the said *F.* to defend any Right of and in the Third Part of the Tenements aforesaid, with the Appurtenances, whereof, &c. ought not to be admitted, because she saith, that well and true it is, that the said *J.* in his Life-time was seised of the Tenements aforesaid, with the Appurtenances, whereof, &c. in his Demesne as of Fee, as the said *F. G.* hath above alledged; but the said *E.* further saith, that the said *J.* of the said Tenements, with the Appurtenances, so as aforesaid being seised, long before the Recovery of the said Debt and Damages by the

ſaid *H.* againſt the ſaid *T.* to wit, the Day, &c. in the Year of the Reign, &c. at *M.* aforeſaid, took to Wife the ſame *E.* and the ſaid Marriage was celebrated between the ſaid *T.* and *E.* according to the Eccleſiaſtical Laws of the Kingdom of *England* then and there in due Manner: By which ſaid Marriage the ſaid *E.* of the aforeſaid Third Part of the Tenements aforeſaid, with the Appurtenances, whereof, &c. by the Law of this Kingdom is dowable, and ought to be indowed; and this ſhe is ready to verify, whereupon ſhe prays Judgment, and her Seiſin of the Third Part of the Tenements aforeſaid, with the Appurtenances, by the Default of the ſaid *J.* to her to be adjudged; and that the ſaid *F.* from making any Defence of Right of and in the Third Part aforeſaid, may be barred, &c.

And the ſaid *F.* ſaith, that he by any Thing above alledged by the ſaid *E.* ought not to be barred from defending his Right, becauſe he ſaith, that the ſaid *T.* before the Recovery of the Debt and Damages aforeſaid by the ſaid *H.* againſt the ſaid *T.* had, did not marry the ſaid *E.* as the ſaid *E.* hath above ſuppoſed, and of this he puts himſelf upon the Country, &c. (here a *Venire facias* returnable, &c.) and upon this at the ſaid Day, &c. on the Petition of the ſaid *E.* it was conſidered, that the ſaid *E.* ſhould recover her Seiſin againſt the ſaid *J.* of the Third Part aforeſaid, with the Appurtenances, to hold to her in Severalty by Metes and Bounds, and the ſaid *J.* in Mercy, &c. but let the Execution thereof ceaſe, until the Iſſue aforeſaid between the ſaid *E.* and *F.* be tryed, &c. at which Day the Jury, &c. who ſay upon their Oath, that the within named *T.* before the Recovery of the

Debt and Damages within contained by the within named *H. J.* againſt the ſaid *T.* married the ſaid *E. B.* as the ſaid *E.* hath above in Pleading alledged: Therefore it is conſidered, that the ſaid *E.* have Execution againſt the ſaid *J.* of her Dower aforeſaid, *&c.* and hereupon the ſaid *E.* ſaith, that the ſaid *T.* her late Husband, by whoſe Indowment, *&c.* the Day whereon he died was ſeiſed of the Tenements aforeſaid, with the Appurtenances, whereof, *&c.* in his Demeſne as of Fee, and of ſuch his Eſtate therein died ſeiſed; and ſhe Demands her Dower from the Time of the Death of the ſaid *T.* together with her Damages, *&c.* to her to be adjudged, *&c.* But becauſe it is unknown what Damages the ſaid *E.* hath ſuſtained, by the Occaſion of Detaining the ſaid Dower, or how much thoſe Tenements are worth by the Year, according to the true Value of them, or how much Time is elapſed ſince the Time of the Death of the ſaid *T.* the Sheriff is commanded, that by the Oath of honeſt and lawful Men of his Bailiwick, he diligently inquire if the ſaid *T.* died ſeiſed of thoſe Tenements, with the Appurtenances, in his Demeſne as of Fee-ſimple, or Fee-tail; and how much Time is elapſed from the Time of the Death of the ſaid *T.* her late Husband, *&c.* and how much thoſe Tenements are worth by the Year, and alſo what Damages the ſaid *E.* ſuſtained, as well by Occaſion of the Detaining of the ſaid Dower, as for her Coſts and Charges, by her about her Suit laid out in this Behalf, and the Inquiſition which he ſhall make thereon, the Sheriff make appear here on, *&c.* under the Seals, *&c.* And alſo the ſaid *E.* prays a Writ of the ſaid Lord the King, to cauſe to be made to her full Seiſin

of

of the Third Part aforesaid, with the Appurtenances, and it is granted her, returnable here at the Term, &c.

At which said Day, here came the said *E.* by her said Attorney, and the Sheriff, to wit, &c. now returns, that by Virtue of the said Writ to him directed, the Day of, &c. last past, he caused to be had and assigned to the said *E.* the Third Part of the Tenements aforesaid, with the Appurtenances, that is to say, Two Tenements, &c. with free Ingress and Regress into, and from the same, at all Times whatsoever, to hold to the said *E.* in Severalty, by Metes and Bounds, as to him it was commanded, &c. And the same Sheriff also returned a certain Inquisition, taken before, &c. the Day and Year aboveſaid, by Virtue of his Command, by the Oath of Twelve, &c. by which it was found that the said *T.* at the Time of his Death was seised of the Tenements aforesaid, with the Appurtenances, in his Demesne as of Fee-simple; and by the same Inquisition it was further found, that the Tenements aforesaid are worth by the Year in all Issues, besides Reprizes, according to the true Value thereof, One Hundred and Fifty Pounds; and that the said *T.* died the Day of, &c. in the Year, &c. and One whole Year and Three Months are elapsed, in the mean Time from the Day of the Death of the said *T.* and the Day of taking the said Inquisition; and that the said *E.* hath sustained Damage by Occasion of the Detaining of her said Dower to Two Pence: Therefore it is considered, that the said *E.* recover against the said *J.* her Damages, to wit, the Third Part of the Value of the Tenements aforesaid, with the Appurtenances, from

the Time of the Death of the ſaid *T.* which doth amount to Sixty-two Pounds and Ten Shillings; and alſo her Damages by Occaſion of the detaining of her ſaid Dower, beſides the Value aforeſaid, to, *&c.* and by the ſaid Inquiſition above found; which ſaid entire Damages in the whole do amount, *&c.* And the ſaid *J.* is in Mercy, *&c.*

A Writ, Declaration and Judgment in a Partition.

Leiceſterſhire, ſſ. A. *B.* and *M.* his Wife, were ſummoned to anſwer *C. D.* and *S.* his Wife, of a Plea; wherefore, whereas the ſaid *C. D.* and *S.* and *A. B.* and *M.* together and undivided hold the Manor of, *&c.* with the Appurtenances, and Twenty Meſſuages, One Mill, One Dove-houſe, Twenty Gardens, Three Hundred Acres of Land, Two Hundred Acres of Meadow, a Hundred and Fifty Acres of Paſture, One Hundred Acres of Wood, Two Hundred Acres of Furze and Heath, and Twenty Shillings Rent, with the Appurtenances, of the Inheritance which was of *E. D.* Eſq; Father of the ſaid *S.* and *M.* whoſe Heirs they are, *&c.* and the ſaid *A.* and *M.* to make Partition thereof between them, according to the Law and Cuſtom of *England* deny, and unjuſtly will not permit the ſame to be done: And whereupon the ſaid *C.* and *S.* by, *&c.* their Attorney complain, that whereas the ſaid *C.* and *S.* and *A.* and *M.* together and undivided hold the Manor, Tenements and Rents aforeſaid, with the Appurtenances; and that unto the ſaid *C.* and *S.* in the

Right

Right of the ſaid *S.* belongs one Moiety of the Tenements aforeſaid, with the Appurtenances; and unto the ſaid *A.* and *M.* in the Right of the ſame *M.* belongs the other Moiety, or Reſidue thereof, to them in Severalty; ſo that the ſame *C.* and *S.* the Moiety to the ſaid *S.* out of the Manor, Tenements and Rent aforeſaid, with the Appurtenances happening, and the ſame *A.* and *M.* the other Moiety thereof to the ſaid *M.* thereof ſo happening, ſeverally may appropriate to themſelves: Nevertheleſs the ſaid *A.* and *M.* Partition thereof between them to be made, according to the Law and Cuſtom of this Kingdom refuſe, and unjuſtly will not ſuffer the ſame to be done; whereupon they the ſaid *C.* and *S.* ſay they are the worſe, and have Damage to the Value of One Hundred Pounds; and thereof they bring their Suit.

And the ſaid *A.* and *M.* by, *&c.* their Attorney, come and defend the Force and Wrong, when, *&c.* and ſay, that they cannot deny the Action of the ſaid *C.* and *S.* aforeſaid; nor but that Partition between the ſame *A.* and *M.* and the ſame *C.* and *S.* of the Manor, Tenements, and Rent aforeſaid, with the Appurtenances, ought to be made in Form aforeſaid, *&c.* and do agree, that Partition thereof between the ſaid *A.* and *M.* and the ſaid *C.* and *S.* be here made, *&c.* Therefore it is conſidered, that Partition between them of the Manor, Tenements and Rent aforeſaid, with the Appurtenances, be made, *&c.* and the ſaid *A.* and *M.* not be in Mercy, becauſe they came the Firſt Day of Summons, *&c.* and the Sheriff is commanded, that taking with him Twelve free and lawful Men of the Neighbourhood aforeſaid, by whom the

Truth of the Matter may be the better known, in his proper Perſon he come to the Manor, Tenements and Rent aforeſaid, with the Appurtenances, and there by their Oath, in the Preſence of the Parties aforeſaid, by the ſaid Sheriff to be warned if they will be preſent, the ſaid Manor, Tenements and Rent aforeſaid, with the Appurtenances (Reſpect being had to the true Value of the ſame) into Two equal Parts to divide, and one Moiety of the Manor, Tenements and Rent aforeſaid, to the ſaid *C.* and *S.* and the other Moiety of the ſame Manor, Tenements and Rent aforeſaid to the ſaid *A.* and *M.* to hold to them in Severalty, he cauſe to be delivered and aſſigned; ſo that neither the ſaid *C.* and *S.* nor the ſaid *A.* and *M.* may have more of the Inheritance aforeſaid, than to them it belongs to have: And ſo that the ſaid *C.* and *S.* of the Part to the ſaid *S.* and the ſaid *A.* and *M.* of the Part to the ſaid *M.* of the Inheritance aforeſaid aſſigned, may ſeverally appropriate themſelves thereof. And the ſaid Partition by the ſaid Sheriff ſo diſtinctly and openly made, have here the Day, *&c.* under the Seal of the ſaid Sheriff, and the Seals, *&c.* The ſame Day is given to the Parties aforeſaid here, *&c.*

A Count in Action of Waſte, and Writ of Inquiry, &c.

Berks, ſſ. A. B. was ſummoned to anſwer *C. D.* of a Plea, wherefore, whereas by the Common Council of this Kingdom of *England* it is provided, that it ſhall not be lawful for any one to commit Waſte, Spoil, or Deſtruction in any

Houſes, Lands, Woods, or Gardens to them demiſed for the Term of Life or Years; the ſaid *A.* in a Houſe, Lands and Woods at *N.* which he holdeth for the Term of his Life, of the Demiſe of the ſaid *C.* did Waſte, Spoil, and Deſtruction, to the Diſinheriting of him the ſaid *C.* and againſt the Form of the Proviſion aforeſaid, *&c.* And whereupon the ſaid *C.* ſaith, that whereas the ſame *C.* was ſeized of a Meſſuage and Tenement called, *&c.* and Six Acres of Land, Three Acres of Paſture, and One Acre of Wood with the Appurtenances in *N.* aforeſaid, in his Demeſne as of Fee, and being ſo thereof ſeiſed, the Day, *&c.* in the Year, *&c.* by Indenture made between him the ſaid *C.* by the Name of *C. D.* of, *&c.* in the County of *B.* aforeſaid of the one Part, and the aforeſaid *A.* by the Name of *A. B.* of, *&c.* in the ſaid County, of the other Part; one Part of which ſaid Indenture ſealed with the Seal of the ſaid *A.* the ſaid *C.* brings here into Court, the Date whereof is the ſame Day and Year above, he the ſaid *C.* demiſed and granted unto the ſaid *A.* all that the Meſſuage or Tenement aforeſaid, with the Appurtenances, *&c.* To have and to hold the ſaid Meſſuage or Tenement, and all and ſingular other the Premiſſes aforeſaid, by the ſaid Indenture ſo demiſed, with their Appurtenances, to the ſaid *A.* for and during the natural Life of him the ſaid *A. &c.* By Virtue of which ſaid Demiſe, the ſaid *A.* into the Meſſuage and Premiſſes aforeſaid, with the Appurtenances, in Form aforeſaid demiſed, entered and was thereof poſſeſſed; and the ſaid *C.* being ſeiſed of the Reverſion of the ſaid Premiſſes, as of Fee, and the ſaid *A.* ſo thereof poſſeſſed, the ſaid *A.* made

Waſte,

Waſte, Spoil and Deſtruction in the Meſſuage or Tenement aforeſaid, with the Appurtenances, that is to ſay, the Day and the Year, &c. One Barn and Stable, Parcel of and adjoining to the ſaid Meſſuage, did throw down and flat to the Ground, and the Timber and other Materials of the ſame, to the Value of, &c. carry away; and Six Timber-Trees, in, &c. Wood, Parcel of the Tenement aforeſaid, with the Appurtenances, the Price of every Tree Twenty Shillings, through the ſaid whole Wood here and there growing, did cut down and fell; and Twenty Poſts, Four Hundred Pales, and Forty Rails, to the Value of, &c. to the Tenement aforeſaid affixed, in the Ground or Garden called, &c. did take and carry away, &c. to the Diſinheriting of the ſaid C. and againſt the Form of the Proviſion aforeſaid; whereupon the ſaid C. ſaith he is the worſe, and hath Damage to the Value of One Hundred Pounds; and therefore he brings his Suit, &c.

And the ſaid A. by, &c. his Attorney, comes and defends the Force and Injury, when and where, &c. and ſaith, that he made no Waſte, Spoil or Deſtruction in the Tenement aforeſaid, with the Appurtenances, as the ſaid C. by his Writ and Declaration above hath ſuppoſed; and of this he puts himſelf upon his Country, and the ſaid C. doth likewiſe the ſame: Therefore the Sheriff is commanded, that he go in his proper Perſon to the Places ſaid to be waſted, and there cauſe to come before him Twelve free and lawful Men of that Neighbourhood, by whom the Truth of the Matter may be the better known, and who are neither, &c. and by their Oath diligently inquire what Waſte, Spoil or Deſtruc-

tion

tion the ſaid *A.* hath done in the Meſſuage aforeſaid, with the Appurtenances, to the Diſinheriting of the ſaid *C.* and againſt the Form of the Proviſion aforeſaid; and the Inquiſition which, *&c.*, the ſaid Sheriff make appear here, the Day, *&c.* under the Seal, *&c.* and the Seals of, *&c.* The ſame Day is given to the ſaid *A.* here, *&c.*

A Plea in Waſte *for Tenant for Years to be admitted and Defend the Action.*

AND now at this Day came as well the ſaid *C. D.* by his Attorney aforeſaid, as one *E. F.* now Tenant of the Tenement aforeſaid, with the Appurtenances, for Term of Years yet to come, by, *&c.* his Attorney; and the ſaid *E.* ſaith, that before the Day of purchaſing of the original Writ of the ſaid *C.* and before any Waſte, Spoil or Deſtruction above ſuppoſed to be done by the ſaid *A. B.* the ſame *A.* was ſeiſed of the Tenement aforeſaid, with the Appurtenances in his Demeſne as of a Freehold, for Term of his Life; and being ſo thereof ſeiſed, before the Waſte aforeſaid above ſuppoſed to be done, that is to ſay, the Day, *&c.* in the Year of the Reign, *&c.* at, *&c.* aforeſaid, by Indenture made between the ſaid *A.* of the One Part, and the ſaid *E.* of the other Part, which other Part, with the Seal of the ſame *A.* ſealed, the ſaid *E.* brings here into Court, whoſe Date is the ſame Day and Year above, demiſed to the ſaid *E.* the Tenement aforeſaid, with the Appurtenances, to have and to hold to him and his Aſſigns from the Feaſt of, *&c.* then next following,

lowing, unto the End and Term of Three Years from thence next enſuing, and fully to be ended, if the ſaid *A.* ſhould ſo long live: And if the ſame *E. F.* his Executors, Adminiſtrators, or Aſſigns, or any of them, ſhould purpoſe or determine to hold and enjoy the ſaid Tenement, with the Appurtenances, for any longer Time or Term of Years than for the ſaid Three Years, and at any Time before the Feaſt, *&c.* which ſhould be in the Year of our Lord, *&c.* ſhould give or leave Notice in Writing of his or their Purpoſe or Intention, at the dwelling Houſe of, *&c.* ſituate and being in, *&c.* in the County of *B.* then to have and to hold the Tenement aforeſaid, with the Appurtenances, to the ſaid *E.* his Executors, Adminiſtrators and Aſſigns, immediately from and after the Expiration of the ſaid Term of Three Years above mentioned, until the End and Term of Six Years then next following, and fully to be compleat and ended, if the ſame *A.* ſhould ſo long live. By Virtue of which Demiſe, the ſaid *E.* on the Day, *&c.* next after the making of the Indenture aforeſaid, into the Tenement aforeſaid, with the Appurtenances, entered and was thereof poſſeſſed for the ſame Term of Three Years in the ſaid Indenture above mentioned; and the ſaid *E.* being ſo thereof poſſeſſed, he the ſaid *E.* afterwards, and before the ſaid Feaſt, *&c.* which was in the Year of our Lord, *&c.* abovefaid, at, *&c.* aforeſaid, at the ſaid Dwelling-houſe of the ſaid, *&c.* there gave and left Notice in Writing, that he purpoſed and was determined to have, hold and enjoy the Tenement aforeſaid, with the Appurtenances for a longer Time and Term of Years, than for the ſaid Term of Three

Years,

Years, in the Indenture aforesaid above mentioned, according to the Form and Effect of the said Indenture, whereby the said *E.* was of the said Interest of and in the said Term of Six Years, to begin after the End or Expiration of the said Term of Three Years, lawfully possessed; and the same *E.* being so possessed thereof, the said Term of Three Years, afterwards, to wit, at the Feast of, *&c.* in the Year, *&c.* ended and determined; by which the said *E.* was and yet is possessed of the Tenement aforesaid, with the Appurtenances, for the said Term of Six Years, if the said *A.* shall so long live. And the said *E.* saith, that the Writ of Waste aforesaid, in Form aforesaid brought, was had and purchased by Fraud and Covin between them the said *A. B.* and *C. D.* at, *&c.* aforesaid, and the Default aforesaid made upon, *&c.* was voluntarily done by the said *A.* to deceive the said *E.* of his Term of Years aforesaid, of and in the Tenement aforesaid, yet to come; and the said *E.* prays, that keeping the Default of the said *A.* in Form aforesaid made, he may be admitted and received to defend his Right, and his Term of Years aforesaid, of and in the Tenement aforesaid with the Appurtenances, now to come, for that the said Tenement is his Right for the said Term of Six Years, if the said *A.* shall so long live: And for that the said *E.* came before Judgment given in the said Plea, ready to answer the said *C. D.* in the Plaint aforesaid, and his Right aforesaid for the said Term of Six Years, if the said *A.* so long live, to defend, *&c.* therefore he is admitted, *&c.*

A Count, Avowry, Trial and Judgment in Replevin *for Rent due.*

Dorſet, ſſ. A. B. was ſummoned to anſwer *C. D.* of a Plea, wherefore he took the Cattle of the ſaid *C.* and them unjuſtly detained againſt Sureties and Pledges, *&c.* and whereupon the ſaid *C.* by, *&c.* his Attorney complains, that the ſaid *A.* the Day of, *&c.* in the Year of the Reign, *&c.* at *S.* in a certain Place there called, *&c.* Meadow, took the Cattle, that is to ſay, Two Cows and Two Horſes of the ſaid *C.* and them unjuſtly detained, againſt Sureties and Pledges, until, *&c.* Whereupon he ſaith, that he is the worſe, and hath Damage, to the Value of Fifteen Pounds; and therefore he brings his Suit, *&c.*

And the ſaid *A.* by, *&c.* his Attorney, comes and defends the Force and Injury, when, *&c.* and well avows the taking of the Cattle aforeſaid, in the ſaid Place in which, *&c.* and juſtly, *&c.* becauſe he ſaith, that the ſame Place in which the taking of the Cattle aforeſaid is ſuppoſed to be done, contained Two Acres of Ground, with the Appurtenances, in *S.* aforeſaid; and that long before the ſaid Time in which, *&c.* one *J. B.* was ſeiſed in his Demeſne as of Fee, of and in one Meſſuage, a Garden, and Ten Acres of Land, with the Appurtenances, in *S.* aforeſaid, whereof the ſaid Place in which, *&c.* is, and from the Time that the Memory of Man is not to the contrary, was Parcel; and being ſo thereof ſeiſed, the ſaid *J.* long before the ſaid Time, in which, *&c.* that is to

 ſay,

ſay, the Day of, &c. in the Year of the Reign, &c. at S. aforeſaid, by his Indenture made between the ſaid J. B. of the One Part, and the aforeſaid C. D. by the Name of, &c. of the other Part, demiſed, granted and to Farm let to the ſaid C. the Tenements aforeſaid, with the Appurtenances, whereof the ſaid Place in which, &c. To have and to hold the ſaid Tenements, with the Appurtenances, to the ſaid C. and his Aſſigns, from the Feaſt of, &c. then next following, until the End and Term of Twenty-one Years, from thence next enſuing, and fully to be compleat and ended: Yielding and paying therefore Yearly during the ſaid Term to the ſaid J. B. and his Aſſigns, Ten Pounds at the Feaſt, &c. or within Twenty-Eight Days next after the ſaid Feaſt. By Virtue of which Demiſe, the ſaid C. into the Tenements aforeſaid entered, and was thereof poſſeſſed, the Reverſion thereof to the ſaid J. B. and his Heirs expectant, and the ſaid C. ſo of the Tenements aforeſaid, with the Appurtenances, whereof, &c. being poſſeſſed, and the ſaid J. of the Reverſion thereof, and of the Rent aforeſaid being ſeiſed, in his Demeſne as of Fee, the ſaid J. before the Time in which, &c. that is to ſay, the Day, &c. in the Year, &c. at S. aforeſaid died, of ſuch his Eſtate of the Reverſion and Rent aforeſaid, with the Appurtenances whereof, &c. ſeiſed, without Iſſue of his Body begotten; after whoſe Death the ſaid Reverſion of the Tenements aforeſaid, with the Appurtenances, whereof, &c. deſcended to the ſaid A. B. as Brother and Heir of the ſaid J. by which the ſaid A. was ſeiſed of the aforeſaid Reverſion, of the Tenements aforeſaid with the Appurtenan-

ces, whereof, &c. and of the Rent aforeſaid, in his Demeſne as of Fee; and becauſe Ten Pounds of the Rent aforeſaid, for One whole Year after the Death of the ſaid *J.* due and ending at the Feaſt of, &c. in the Year, &c. to the ſaid *A.* the aforeſaid Time in which, &c. was behind and not paid, the ſaid *A.* doth well avow the taking of the Cattle aforeſaid, in the ſame Place in which, &c. as in Parcel of the Tenements aforeſaid, with the Appurtenances, to the ſaid *C.* in Form aforeſaid demiſed, and juſtly, &c. for the ſaid Ten Pounds of the Rent aforeſaid, to him the ſaid *A.* ſo being behind and unpaid, according to the Form of the Statute, &c.

And the ſaid *C.* ſaith, that the ſaid *A.* for the Reaſon before alledged, ought not to avow the taking of the Cattle aforeſaid in the ſaid Place in which, &c. to be juſt; becauſe he ſaith, that well and true it is, that the ſaid *J. B.* was ſeiſed of the Tenements aforeſaid with the Appurtenances, whereof, &c. in his Demeſne as of Fee, and being ſo thereof ſeiſed, demiſed to the ſaid *C.* the ſaid Tenements, with the Appurtenances; to have and to hold to the ſaid *C.* for the aforeſaid Term of Twenty-one Years, as the ſaid *A.* above hath alledged: But the ſaid *C.* ſaith, that the ſaid *J. B.* of the Reverſion of the Tenements aforeſaid, with the Appurtenances, whereof, &c. in his Demeſne as of Fee, in Form aforeſaid being ſeiſed, before the aforeſaid Time in which, &c. into the Tenements aforeſaid, with the Appurtenances, whereof, &c. upon the Poſſeſſion of him the ſaid *C.* entered, and him the ſaid *C.* from his Poſſeſſion did expel and amove; and immediately after, of the ſaid Tenements, with the Appurtenances, whereof, &c. enfeoffed one

N. B.

N. B. to have and to hold the Tenements aforesaid, with the Appurtenances, whereof, *&c.* to the said *N.* and his Heirs and Assigns for ever; by Virtue of which Feoffment, the said *N.* was seised of the said Tenements, with the Appurtenances, whereof, *&c.* in his Demesne as of Fee, upon which Possession of the said *N. B.* the said *C.* afterwards, and before the said Time in which, *&c.* claiming his Term aforesaid, of and in the Tenements aforesaid, with the Appurtenances, whereof, *&c.* into the same Tenements, with the Appurtenances, re-entered, and was thereof possessed; and so thereof being possessed, the said *C.* before the said Time in which, *&c.* put the Cattle aforesaid, into the aforesaid Place in which, *&c.* to eat the Grass in the same then growing; which Cattle were in the said Place in which, *&c.* eating the Grass in the same then growing, 'till the said *A.* the Day and Year in the Declaration aforesaid above specified, at *S.* aforesaid, in the aforesaid Place called, *&c.* took the Cattle of him the said *C.* and them unjustly detained against Sureties and Pledges, until, *&c.* as he above against him complains: Without that, that the aforesaid *J. B.* died of the Reversion of the Tenements aforesaid, with the Appurtenances, whereof, *&c.* and of the Rent aforesaid seised, as the aforesaid *A.* above hath alledged; and this he is ready to verify; wherefore as the said *A.* the taking of the Cattle aforesaid, in the said Place, in which, *&c.* above acknowledgeth, the said *C.* demands Judgment, and his Damages by Occasion of the taking, and unjust detaining of the said Cattle, to be adjudged unto him, *&c.*

And the ſaid *A.* as at firſt ſaith, that the aforeſaid *J. B.* died of the Reverſion of the Tenements aforeſaid, with the Appurtenances, whereof, &c. and of the ſaid Rent ſeiſed, as he hath above alledged; and of this puts himſelf upon the Country; and the ſaid *C.* likewiſe: Therefore the Sheriff is commanded, that he cauſe to come here, the Day, &c. Twelve, &c. by whom, &c. and who neither, &c. to Recognize, &c. becauſe as well, &c. at which Day here came the Parties, &c. and the Sheriff ſent not the Writ; therefore as before, it is commanded to the Sheriff, that he cauſe to come here, Twelve, &c. in the Morrow, &c. to recognize, &c. at which ſaid Day here come the Parties aforeſaid, and the Sheriff ſent not the Writ; therefore the Sheriff is commanded as at firſt, that he cauſe to be here the Day, &c. Twelve, &c. to Recognize in Form aforeſaid, &c. At which Day the ſaid Parties came, and the Sheriff ſent not the Writ, (and ſo ſeveral *Venire facias*'s were awarded to the Sheriff, from Term to Term, to return Jurors at a Day every of the ſaid Terms, as at firſt, and the Parties come at the ſaid Days, and the Sheriff ſent not the Writ, &c.) And Proceſs was continued between the Parties aforeſaid, of the Plea aforeſaid, by Jurors put in Reſpite, until this Day, that is to ſay, the Day, &c. in the Eighth Year of the Reign of the Lord the King that now is, unleſs the Juſtices of the ſaid Lord the King, aſſigned to take Aſſiſes in the County aforeſaid, according to the Form of the Statute, &c. on the Day, &c. at *D.* in the ſaid County, ſhould firſt come, &c.

And now at this Day, as well the ſaid *C. D.* as the aforeſaid *A. B.* came by their Attornies afore-

aforeſaid; and the ſaid Juſtices of Aſſiſe before whom, &c. ſent here their Records in theſe Words: Afterwards, at the Day and Place within contained, before, &c. Juſtices of the ſaid Lord the King, to take Aſſiſes in the County of *D.* aſſigned, by the Form of the Statute, &c. come as well the within named *C. D.* by, &c. his Attorney, as the within written *A. B.* by, &c. his Attorney, and the Jurors of the Jury whereof Mention is within made, that is to ſay, &c. likewiſe came, and being elected, tried and ſworn to ſay the Truth of the Matter within contained, ſay upon their Oath, that one *J. B.* was ſeiſed in his Demeſne as of Fee, of and in the within mentioned Meſſuage, Garden and Land, with the Appurtenances, in *S.* within written, whereof the within mentioned Place in which, &c. and at the within written Time in which, as alſo Time whereof the Memory of Man is not to the contrary, was Parcel; and further the Jurors ſay upon their Oath aforeſaid, that the ſaid Place in which, &c. doth contain, and at the aforeſaid Time in which, &c. did contain in it ſelf two Acres of Ground, and was called by the Name of, &c. Meadow, and is, and the ſaid Time in which, &c. as alſo Time whereof the Memory of Man is not to the contrary, was a ſeveral Cloſe by it ſelf ſeparately incloſed; and that the aforeſaid *J. B.* ſo thereof (as before is ſaid) being ſeiſed, afterwards, that is to ſay, the Day, &c. in the Year of the Reign, &c. at *S.* aforeſaid, by his Indenture within written, made between the ſaid *J. B.* of the One Part, and the aforeſaid *C. D.* of the other Part, demiſed, granted and to Farm let to the ſaid *C. D.* the Tenements aforeſaid, with the Appurtenan-

ces, whereof, &c. To have and to hold the ſaid Tenements with the Appurtenances, whereof, &c. to the ſaid *C. D.* and his Aſſigns, from the Feaſt of, &c. then next following, unto the End and Term of Twenty-one Years, then next enſuing and fully to be compleat and ended; yielding and paying therefore Yearly, to the ſaid *J. B.* and his Aſſigns, Ten Pounds at the Feaſt of, &c. or within Twenty-eight Days next after the ſame: By Virtue of which Demiſe, the ſaid *C. D.* into the Tenements aforeſaid, with the Appurtenances, whereof, &c. entered, and was thereof poſſeſſed, the Reverſion thereof to the ſaid *J. B.* and his Heirs expectant; and he the ſaid *C. D.* of the Tenements aforeſaid, with the Appurtenances, whereof, &c. being poſſeſſed, and the ſaid *J. B.* of the Reverſion thereof, and of the Rent aforeſaid being ſeiſed in Demeſne as of Fee, the ſaid *J. B.* into the aforeſaid Cloſe in which, &c. called, &c. in the Poſſeſſion of the ſaid *C. D.* entered, and there immediately after, ſealed and delivered as his Deed, a certain Deed containing a Feoffment of the Tenements aforeſaid, with the Appurtenances, whereof, &c. to one *N. B.* his Heirs and Aſſigns for ever; and further the Jurors ſay upon their Oath, that immediately after the Sealing and Delivery of the Deed of Feoffment aforeſaid, Poſſeſſion and Seiſin upon that Deed of Feoffment was given and delivered, by the aforeſaid *J. B.* to the ſaid *N. B.* in and upon the ſaid Cloſe of Meadow called, &c. in which, &c. neither the ſaid *C. D.* nor any other, at the ſaid Time of the Delivery of the ſaid Poſſeſſion and Seiſin, of the ſaid Cloſe there being; by Virtue whereof, the ſaid *N. B.* into

into the Tenements aforesaid, with the Appurtenances, whereof, &c. entered, and thereof was seised as the Law requires: And the Jurors further say upon their Oath aforesaid, that the said *C. D.* at the Time of the Giving and Delivery of the Possession and Seisin in the Close aforesaid, was in the Messuage and the Residue of the Tenements aforesaid, by Virtue of the Lease aforesaid to him made, and that afterwards and before the Time in which, &c. the said *C. D.* into the said Close, called, &c. with the Appurtenances, in which, &c. re-entered, claiming the same by the said Lease, to him in Form aforesaid made; and further the Jurors say upon their Oath, that afterwards, and before the Time in which, &c. that is to say, the Day of, &c. in the Year of the Reign, &c. the said *J. B.* at *S.* aforesaid died, without Issue of his Body begotten; and that the aforesaid *A. B.* is his Brother and next Heir. But whether upon the whole Matter aforesaid, in Form aforesaid found, the Possession and Seisin in Manner and Form aforesaid given and delivered, of and in the aforesaid Close called, &c. in which, &c. be, or in Law ought to be adjudged a good and lawful Possession and Seisin of the same Close in which, &c. the Jurors are altogether ignorant, and thereof they pray the Advice of the Justices of the Lord the King here; and if upon the said whole Matter, in Form aforesaid found, it shall seem to the said Justices of the said Lord the King here, that the aforesaid Possession and Seisin, in Form aforesaid given and delivered of and in the aforesaid Close called, &c. be, or in Law ought to be adjudged, a good and lawful Possession and Seisin, of the said Close called,

&c. in which, &c. with the Appurtenances, &c. Then the Jurors aforesaid say, upon their Oath aforesaid, that the said *J. B.* did not die seised of the Reversion of the Tenements within written, with the Appurtenances, &c. nor of the Rent within mentioned, as the said *C. D.* within for him alledges; and then they assess the Damages of the said *C. D.* by the Occasion within written, besides his Costs and Charges by him about his Suit in this Particular laid out and expended, to, &c. and for his Costs and Charges, &c. But if upon the whole Matter aforesaid, in Form aforesaid found, it shall seem to the said Justices of the said Lord the King, that the Possession and Seisin, in Form aforesaid given and delivered, of and in the said Close called, &c. be not, nor in Law ought to be adjudged a good and lawful Possession and Seisin, of the said Close called, &c. in which, &c. Then the Jurors say upon their Oath aforesaid, that the aforesaid *J. B.* died seised of the Reversion of the Tenements aforesaid, with the Appurtenances, whereof, &c. and of the Rent aforesaid, as the said *A. B.* within for him alledgeth; and then they assess the Damages of the said *A. B.* by the Occasion within written, &c. And because the Justices here, will advise themselves of and upon the Premisses, before they give their Judgment thereof, Day is given to the Parties aforesaid here until the Day, &c. to hear their Judgment thereof, because the said Justices here are not yet advised, &c.

At which Day, here comes as well the said *C. D.* as the said *A. B.* by their Attornies aforesaid; and because the Justices here will further advise themselves, of and upon the Premisses,

further Day is given to the Parties aforesaid here, until, &c. to hear their Judgment, because the Justices here thereof are not yet, &c. At which said Day here come, &c. and because the Justices, &c. further Day is given, &c. (here entering the Continuances and Adjournments from Day to Day) at which Day, here comes as well the said *C.* as the said *A.* by their Attornies aforesaid; and upon this, the Premisses aforesaid being seen, and by the Justices here fully understood, it is considered, that the said *C* take nothing by his Writ aforesaid, but be in Mercy for his false Claim, &c. And that the said *A.* go thereof without Day, &c. And that he have Return of the Cattle aforesaid, to be kept by him irreplegiable for ever. And how, &c. the Sheriff make it here appear in, &c. It is also considered, that the said *A.* do recover against the said *C.* his Damages aforesaid, by the Jurors in Form aforesaid assessed; as also, &c. for his Costs and Charges aforesaid, by the Court here of Increase with his Assent adjudged; which Damages in the whole amount to, &c.

A Count in Replevin, *with special Avowry, Pleadings, and Demurrer,* &c. *on taking a Distress for an Annuity.*

Somerset, ss. A. *B.* and *C. D.* Gentlemen, were summoned to answer to *E. F.* of a Plea; wherefore they took the Cattle of the said *E.* and them unjustly detained against Sureties and Pledges, &c. and whereupon the said *E.* by, &c. his Attorney complains, that the said *A.* and *C.* the Day, &c. in the Year, &c. at

at *W.* in a certain Place there called *M.* took the Cattle, to wit, Three Cows and, &c. of the ſaid *E.* and them unjuſtly detained, againſt Sureties and Pledges, until ſuch a Day, wherein they were delivered by *G. H.* Eſq; Sheriff of the County aforeſaid, or Bailiff of the Lord the King ſworn and acknowledged, &c. Whereupon he ſaith, that he is the worſe, and hath Damage to the Value, &c. and thereof he brings his Suit, &c.

And the ſaid *A.* and *C.* by, &c. their Attorney, come and defend the Force and Injury, when, &c. and the ſaid *A.* well avows, and the ſaid *C.* as Bailiff of the ſaid *A.* well acknowledges, the taking of the Cattle aforeſaid, in the ſame Place, in which, &c. and juſtly, &c. becauſe he ſaith, that the ſaid Place in which the taking of the Cattle aforeſaid is ſuppoſed to be done, doth contain, and at the ſaid Time in which, &c. did contain in it ſelf Forty Acres of Paſture, with the Appurtenances, in *W.* aforeſaid; and that long before the ſame Time in which, &c. one *H. B.* Eſq; Father of the ſaid *A.* was ſeiſed of the ſaid Forty Acres of Paſture, with the Appurtenances, in which, &c. amongſt other Lands, in his Demeſne as of Fee; and the ſaid *H.* being ſo ſeiſed thereof, *J. K.* and *L. M.* by the Names of, &c. before the ſaid Time in which, &c. to wit, the Day, &c. in the Year of the Reign, &c. proſecuted out of the Court of Chancery of the Lord the King, at *Weſtminſter* in the County of *Middleſex*, a certain Writ of the ſaid Lord the King *De Ingreſſu in le poſt* againſt the ſaid *H.* and *R.* his Wife, of the Manor of *W.* with the Appurtenances, whereof, &c. the ſaid *H.* then being Tenant of the Freehold

hold of the ſaid Manor, with the Appurtenances, by the Name of the Manor of *W.* and of Six Meſſuages, Three Hundred Acres of Land, Two Hundred Acres of Paſture, One Hundred Acres of Wood, *&c.* with the Appurtenances, in *W.* then directed to the Sheriff of the County of *S.* By which ſaid Writ, it was commanded to the then Sheriff, that he the ſaid Sheriff ſhould command the ſaid *H. B.* and *R.* that juſtly and without Delay, they render to the ſaid *J. K.* and *L. M.* the Manor, Tenements, and Rent aforeſaid, with the Appurtenances, which the ſame *J. K.* and *L. M.* then claimed, as their Right and Inheritance, and into which the ſaid *H.* and *R.* had not an Entry, but after a Diſſeiſin, which *Hugh Hunt* thereof unjuſtly, and without Judgment made to the ſaid *J. K.* and *L. M.* within Thirty Years then laſt paſt, as they ſaid; and unleſs they, and the ſame *J. K.* and *L. M.* made the ſaid Sheriff then ſecure to proſecute their Suit: Then the ſaid Sheriff to ſummon by good Summoners the ſaid *H.* and *R.* that they be before the Juſtices of the ſaid Lord the King of Common Bench here, to wit, at *Weſtminſter* aforeſaid, on the Day, *&c.* then next following, to ſhew wherefore they had not done it: And that the ſaid Sheriff ſhould then have there the Summons, and that Writ.

At which ſaid Day, before, *&c.* the Juſtices of the ſaid Lord the King of Common Bench here, came as well the ſaid *J. K.* and *L. M.* as the ſaid *H.* and *R. B.* in their proper Perſons; and *G. H.* Eſq; then Sheriff of the County of *S.* aforeſaid, then here returned the Writ aforeſaid, to him in Form aforeſaid directed, in all Things executed, to wit, that the ſaid *J. K.* and *L. M.*

L. M. had found to the ſaid Sheriff, Pledges to proſecute the ſaid Writ, that is to ſay, *John Doe* and *Richard Roe*, and that the ſaid *H. B.* and *R.* was ſummoned by, *&c.* And hereupon the ſaid *J. K.* and *L. M.* declaring againſt the ſaid *H. B.* and *R.* upon their Writ aforeſaid, in their proper Perſons, then demanded againſt the ſaid *H. B.* and *R.* the Manor, Tenements, and Rent aforeſaid, with the Appurtenances, as their Right and Inheritance, and into which the ſame *H.* and *R.* had not an Entry, but after the Diſſeiſin which *Hugh Hunt* thereof unjuſtly, and without Judgment did to the ſaid *J. K.* and *L. M.* within Thirty Years then laſt paſt, *&c.* And whereupon they ſaid, that they were ſeiſed of the Manor, Tenements, and Rent aforeſaid, with the Appurtenances, in their Demeſne as of Fee and Right, in Time of Peace, in the Time of the late King, *&c.* taking thereof the Profits, to the Value, *&c.* and into which, *&c.* and therefore they brought their Suit, *&c.* and the ſaid *H. B.* and *R.* in their proper Perſons then defended their Right, when, *&c.* and called thereof to warrant *W. B.* Gent. Son and Heir apparent of the ſaid *H. B.* his Father, who was then preſent in the Court here in his own Perſon; and freely the Manor, Tenements and Rent aforeſaid, with the Appurtenances, to them warranted, *&c.* and hereupon the ſaid *J. K.* and *L. M.* then demanded againſt the ſaid *W. B.* Tenant, by his Warranty, the Manor, Tenements and Rent aforeſaid, with the Appurtenances, in Form aforeſaid, *&c.* And whereupon they then ſaid, that they were ſeiſed of the ſaid Manor, Tenements and Rent, with the Appurtenances, in their Demeſne as of Fee and Right,

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in Time of Peace, in the Time of, &c. taking the Profits, to the Value, &c. and into which, &c. and thereof they then brought their Suit, &c. and the ſaid *W. B.* Tenant by his Warranty, defended his Right, when, &c. and further then called thereof to warrant *D. B.* who then likewiſe was preſent here in his own Perſon; and freely the Manor, Tenements, and Rent aforeſaid, with the Appurtenances, to them then warranted, &c. And hereupon the ſaid *J. K.* and *L. M.* then demanded againſt the ſaid *D.* Tenant, by his Warranty, the ſaid Manor, Tenements and Rent aforeſaid, with the Appurtenances, in Form aforeſaid, &c. and whereupon they then ſaid, that they were ſeiſed, &c. in the Time of, &c. taking thereof the Profits to the Value, &c. and into which, &c. and thereof they then brought their Suit, &c. And the ſaid *D. B.* then Tenant, by his Warranty, defended his Right, when, &c. and then ſaid, that the ſame *Hugh Hunt* had not diſſeiſed the ſaid *J. K.* and *L. M.* of the Manor, Tenements and Rent aforeſaid, with the Appurtenances, as the ſaid *J. K.* and *L. M.* by their Writ and Declaration aforeſaid had above ſuppoſed; and hereupon then put himſelf upon the Country, &c. And the ſaid *J. K.* and *L. M.* then prayed Licence to imparl, and had it, &c. and afterwards the ſame *J. K.* and *L. M* came back into the ſaid Court, that ſame Term, in their proper Perſons; and the ſaid *D. B.* being then ſolemnly called, came not again, but departed in Contempt of the Court, and made Default: Therefore it was then conſidered in the ſaid Court here, that the ſaid *J. K.* and *L. M.* ſhould recover their Seiſin againſt the ſaid *H. B.* and *R.*

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of the Manor, Tenements and Rent aforeſaid, with the Appurtenances; and that the ſaid *J. K.* and *L. M.* ſhould have of the Lands of the ſaid *W. B.* to the Value; and that the ſaid *W.* further have of the Lands of the ſaid *D. B.* to the Value, *&c.* and that the ſaid *D.* ſhould be in Mercy, *&c.* And hereupon the ſaid *J. K.* and *L. M.* then prayed the Writ of the ſaid Lord the King to be directed to the Sheriff of the County, to cauſe to be delivered to them full Seiſin of the Manor, Tenements, and Rent aforeſaid, with the Appurtenances; and to them it was then granted, returned here immediately, *&c.*

Afterwards, that is to ſay, the Day, *&c.* in that ſame Term, came here into Court, the ſaid *J. K.* and *L. M.* in their proper Perſons; and then the Sheriff of the County of *S.* aforeſaid, that is to ſay, *G. H.* Eſq; then returned, that he by Virtue of the ſaid Writ to him directed, the Day of, *&c.* then laſt paſt, cauſed to be delivered to the ſaid *J. K.* and *L. M.* full Seiſin of the Manor, Tenements, and Rent aforeſaid, with the Appurtenances, as by the ſame Writ it is commanded him, *&c.* which ſaid Recovery, in Form aforeſaid had, was had to the Uſe of the ſaid *H. B.* the Father, for Term of his Life; and after the Deceaſe of the ſaid *H.* then to the Uſe of the ſaid *W. B.* and the Heirs Males of the Body of the ſaid *W.* upon the Body of, *&c.* lawfully begotten, with Intention that there ſhould be paid out of the Forty Acres of Paſture aforeſaid, with the Appurtenances, in which, *&c.* among other things, to, *&c.* ſeveral Sums of Money, and Annuities, limited and appointed to be paid by the laſt Will in Writing

of the ſaid *H. B.* or by any other his Deed in writing, lawfully to be executed, *&c.* by Virtue of which Recovery, and the Statute of *Hen.* 8. for transferring of Uſes into Poſſeſſion, *&c.* the ſaid *H. B.* was ſeiſed, amongſt other Things, of the ſaid Forty Acres of Paſture, with the Appurtenances, in which, *&c.* in his Demeſne as of Freehold for Term of his Life, the Remainder to the ſaid *W. B.* and the Heirs Males of his Body, *&c.* and the ſaid *H. B.* being ſo ſeiſed thereof, the Remainder thereof to the ſaid *W.* in Form aforeſaid belonging, he the ſaid *H. B.* afterwards, and before the Time in which, *&c.* to wit, the Day, *&c.* in the Year of the Reign, *&c.* aboveſaid, at *W.* aforeſaid, by his certain Deed in Writing, which the aforeſaid *A. B.* with the Seal of the ſaid *H. B.* ſealed, here in Court bringeth, whoſe Date is the ſame Day and Year above, limited and appointed to the ſaid *A.* by the Name of *A. B.* his youngeſt Son, a certain Annuity of Twenty-five Pounds a Year, iſſuing out of the ſaid Forty Acres of Paſture, with the Appurtenances, in which, *&c.* amongſt other Things aforeſaid, by the Name, *&c.* lying and being in *W.* aforeſaid, in the ſaid County of *S. &c.* to have, levy and receive the ſaid Annuity or Annual Rent of Twenty-five Pounds, to the ſaid *A. B.* and his Aſſigns, from the Day of the Death of the ſaid *H. B.* for and during the Term of the natural Life of the ſaid *A. B.* to be paid Yearly at the Feaſts of, *&c.* by equal Portions; the Firſt Payment thereof to begin at that Feaſt of the Feaſts aforeſaid, which after the Death of the ſaid *H. B.* ſhould next happen. And afterwards, and before the ſame Time in which, *&c.* to wit, the Day, *&c.* in the Year

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of our Lord, &c. the ſaid *H. B.* died at *W.* aforeſaid, and the ſaid *A. B.* him ſurvived: By Virtue of which ſaid Limitation and Appointment, and by Force of the Statute aforeſaid, the ſaid *A.* was ſeiſed of the ſaid Annual Rent of Twenty-five Pounds, in his Demeſne as of Freehold, for Term of his Life; and becauſe Fifty Pounds of the Yearly Rent or Annuity aforeſaid, for Two whole Years ending at the Feaſt, &c. in the Year of the Reign, &c. aboveſaid, after the Death of the ſaid *H. B.* to the ſaid *A. B.* the ſaid Time in which, &c. were in Arrear, and not paid to the ſaid *A.* for the ſaid Fifty Pounds, ſo being in Arrear, he well avoweth; and the aforeſaid *C. D.* as Bailiff of the ſaid *A.* well acknowledgeth the taking of the Cattle aforeſaid, in the ſame Place, in which, &c. and juſtly, &c. as in the Lands to the ſaid *A.* charged and tied to Diſtreſs, &c. with this, that the ſaid *A.* and *C.* will verify, that the ſaid Forty Acres of Paſture, with the Appurtenances, in which, &c. are Parcel of the Lands and Tenements aforeſaid, in the Recovery aforeſaid ſpecified, &c.

And the ſaid *E. F.* ſaith, that the ſaid *A. B.* for the Reaſon before alledged, the taking the Cattle aforeſaid in which, &c. ought not juſtly to avow; nor the ſaid *C.* as Bailiff of the ſaid *A.* for the ſame Reaſon, the taking of the ſaid Cattle, ought juſtly to acknowledge; becauſe he ſaith, that true it is, the ſaid *H. B.* was ſeiſed of the ſaid Forty Acres of Paſture, with the Appurtenances, in which, &c. in his Demeſne as of Fee; and the ſaid *H. B.* being ſo thereof ſeiſed, the ſaid *J. K.* and *L. M.* by the ſaid Writ of Entry, &c. recovered their Seiſin againſt

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the ſaid *H. B.* and *R.* of the Manor, Tenements, and Rent aforeſaid, with the Appurtenances, whereof, &c. and that Seiſin of the ſaid Manor, Tenements, and Rent, with the Appurtenances, by the ſaid Sheriff to the ſaid *J. K.* and *L. M.* in Form aforeſaid was delivered; and that the ſaid *H. B.* the ſame Day of, &c. in the Year of the Reign, &c. aboveſaid, by his ſaid Writing, limited and appointed to the ſaid *A. B.* by the Name of, &c. the ſaid Yearly Rent of Twenty-five Pounds, iſſuing out of the ſaid Forty Acres of Paſture, with the Appurtenances, amongſt other Things, to have and receive the ſame to the ſaid *A.* &c. for and during the natural Life of the ſaid *A.* to be paid Yearly at the ſaid Feaſts, &c. as by the ſaid *A.* and *C.* by their Avowry aforeſaid above have ſuppoſed; and the ſaid *E.* alſo ſaith, that the ſaid *H. B.* further by the Writing aforeſaid granted, that if it ſhould happen the ſaid Annuity, or Yearly Rent of Twenty-five Pounds aforeſaid, to be behind and not paid, &c. that then it ſhould be lawful for the ſaid *A. B.* into the ſaid Forty Acres of Paſture, with the Appurtenances, &c. to enter and diſtrain, &c. And the ſame *E.* further ſaith, that long before the ſuffering of the Recovery aforeſaid, in Form aforeſaid, and before the Limitation and Appointment of the Annuity aforeſaid, the ſaid *H. B.* that is to ſay, the Day of, &c. in the Year of the Reign, &c. at *W.* aforeſaid, by his certain Indenture, made between the ſaid *H. B.* and *R.* his Wife, &c. and &c. One Part whereof with the Seals of the ſaid, &c. ſealed, the ſaid *E.* here brings into Court, whoſe Date is the ſame Day and Year above, amongſt other Things, it was granted, and agreed

by and between the Parties aforeſaid to the ſaid Indenture; that the Recovery aforeſaid ſhould be, and that the Recoverors in the ſame Recovery named, and their Heirs after the ſaid Recovery had, ſhould ſtand and be for ever ſeiſed of the ſaid Cloſe or Paſture called *M.* to the Uſes following, *&c.* (inſerting divers Remainders, and precedent Uſes and Limitations different from thoſe in the other Recovery) as by the ſame Indenture, among other Things, more fully appears; and this he is ready to verify: Whereupon, for that the ſaid *A.* and *C.* the taking of the Cattle aforeſaid, in the ſaid Place in which, *&c.* above acknowledge; the ſaid *E.* prays Judgment, and his Damages, by Occaſion of the taking, and unjuſt detaining of the ſaid Cattle, to be adjudged to him, *&c.* With this, that the ſaid *E.* will verify, that the ſaid *A. B.* now avowant, and the ſaid *A.* in the Indenture above ſpecified, is one and the ſame Perſon, and no other or divers, *&c.*

And the ſaid *A. B.* ſaith, that the ſaid Plea of the ſaid *E.* above in his Replication pleaded, and the Matter therein contained, are inſufficient in Law to maintain the Action of the ſaid *E.* againſt the ſame *A.* and *C.* for that the ſaid *E.* in his Replication aforeſaid, in Form aforeſaid pleaded, doth not confeſs, avoid, nor traverſe any Matter of Subſtance by the ſaid *A.* and *C.* above in the Avowry aforeſaid alledged; and that they unto the ſame Plea, in Manner and Form aforeſaid pleaded, have no need, nor by the Law of the Land are bound to anſwer; and this they are ready to verify; whereupon, for Default of a ſufficient Replication, of the ſaid *E.* in this Behalf, the ſaid *A.* and *C.* pray

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Judgment, and that the ſame *E.* from having his Action aforeſaid againſt them may be barred, *&c.* And the ſaid *E.* in as much as he ſufficient Matter in Law, to have and maintain his Action aforeſaid againſt the ſaid *A.* in his Replication above hath alledged, which he is ready to verify; and which ſaid Matter the ſaid *A.* doth not deny, nor make any Anſwer thereto, but to admit of the Juſtification altogether refuſeth; as before, he prays Judgment, and his Damages, by reaſon of the taking and unjuſt detaining of the Cattle aforeſaid, to him to be adjudged, *&c.* And becauſe the Juſtices here will adviſe themſelves of and upon the Premiſſes, before they give Judgment thereof, Day is given to the Parties aforeſaid here until, *&c.* to hear their Judgment thereof, becauſe the ſaid Juſtices here thereof are not yet, *&c.* at which Day here, that is to ſay, at *Weſtminſter* aforeſaid, comes as well the ſaid *E.* as the ſaid *A.* and *C.* by their Attornies aforeſaid; and upon this, the Premiſſes being ſeen, and by the Juſtices here fully underſtood, it ſeems to the ſaid Juſtices here, that the aforeſaid Plea of the ſaid *E.* above in Bar of the Conuſance aforeſaid pleaded, is ſufficient in Law, *&c.* for which Reaſon, the ſaid *E.* his Damages, by Occaſion of the taking, and unjuſt detaining of the Cattle aforeſaid, againſt the ſaid *A.* ought to recover: But becauſe it is unknown, what Damages the ſaid *E.* by the Occaſion of taking, and unjuſt detaining of the Cattle aforeſaid hath ſuſtained; it is commanded to the Sheriff, that by the Oaths of good and lawful Men of his County he diligently inquire what Damages the ſaid *E.* ſuſtained, as well by Occaſion of the taking, and

unjuſt detaining of the Cattle aforeſaid, as for his Coſts and Charges by him about his Suit in this behalf expended; and the Inquiſition which, &c. The Sheriff to make appear here on the Day, &c. under his Seal, and the Seals, &c. at which ſaid Day, here comes the ſaid *E. F.* by his Attorney aforeſaid; and thereupon the ſaid *E.* acknowledges in the Court here, that he would not further proſecute the ſaid *A.* for any Damage to him, by the Occaſion of the taking, and unjuſtly detaining of the Cattle aforeſaid to be adjudged; but all the ſaid Damages ſo to him to be adjudged, willingly here in Court to the ſaid *A.* doth remiſe and releaſe; therefore the ſaid *A.* of thoſe Damages be acquitted, &c.

A Count, Comuſance, Plea and Iſſue in Replevin, *for an Amerciament.*

Gloceſter, ſſ. A. B. was ſummoned to anſwer *C. D.* of a Plea, wherefore he took the Cattle of the ſaid *C.* and them unjuſtly detained, againſt Sureties and Pledges, &c. and whereupon the ſaid *C.* by, &c. his Attorney complains, that the ſaid *A.* the Day of, &c. in the Year of the Reign, &c. at *T.* in a certain Place called *F.* took the Cattle, to wit, Two Heifers of the ſaid *C.* and them unjuſtly detained, againſt Sureties and Pledges, until, &c. whereupon he ſaith he is the worſe, and hath Damage, &c. and thereof he brings his Suit, &c.

And the ſaid *A.* by, &c. his Attorney, comes and defends the Force and Injury, when, &c. And as Bailiff of *W. T.* Eſq; well acknowledges the taking of the Cattle aforeſaid, in the ſame

Place in which, &c. and juſtly, &c. Becauſe he ſaith, that the ſaid Place in which the taking of the Cattle aforeſaid is ſuppoſed to be done, is and at the Time in which, &c. was a certain Yard, Parcel of a Meſſuage, with the Appurtenances, wherein the ſaid *C. D.* doth now dwell in the County aforeſaid; and before the ſaid Time in which, &c. and alſo at the ſame Time, the ſaid *W. T.* was ſeiſed of the Manor of *M.* with the Appurtenances, in the County aforeſaid, and of Two Mills, to wit, &c. with the Appurtenances in *M.* aforeſaid, Parcel of the Manor aforeſaid, in his Demeſne as of Fee; and that the ſaid Meſſuage, with the Appurtenances, whereof the ſaid Place in which, &c. is Parcel, and the ſame Time in which, &c. and alſo from the Time whereof the Memory of Man is not to the contrary, was Parcel of the ſaid Manor, within which ſaid Manor is had, and from the Time in which, &c. and likewiſe from the Time whereof the Memory of Man is not to the contrary, was had a certain ancient Cuſtom, to wit, that every Houſholder within the Manor aforeſaid, hath uſed and been accuſtomed, and ought to grind all and every of their Grain, in the Houſe of every ſuch Houſholder to be expended, at the Mills of the ſaid *W. T.* in *M.* aforeſaid, ſo long as ſuch Houſholder ſhall have his ſaid Grain there well and at convenient times grinded; and alſo that when any ſuch Houſholder ſhall ceaſe to grind ſuch his Corn and Grain at the ſaid Mills, and ſhall grind the ſame at any other Mill, if ſuch Surceaſing of grinding of ſuch Corn at the Mills of the Lord aforeſaid, ſhall be preſented at the Court Baron of the Manor aforeſaid, by the Homage of the

ſaid Court, then every ſuch Houſholder within the Manor aforeſaid, in the ſame Court of the ſaid Manor, for every ſuch Default againſt the Cuſtom aforeſaid, by the Conſideration of the ſame Court, ſhall be amerced, and that Amercement by the Affeerers of the ſaid Court, being duly choſen, ſhall be affeered. And that the ſaid *W. T.* and all thoſe whoſe Eſtate the ſaid *W.* now hath, and the ſame Time in which, &c. had in the Manor aforeſaid, with the Appurtenances, from the whole Time whereof the Memory of Man is not to the contrary, have uſed and were accuſtomed to diſtrain every ſuch Houſholder, offending againſt the ſaid Cuſtom as aforeſaid, for every Amercement ſo to be affeered, and being in Arrear unpaid, by any Goods or Chattels of every ſuch Houſholder, within the Precincts of the Manor aforeſaid. And the ſaid *A.* further ſaith, that the ſaid *C.* the ſame Time in which, &c. and for ſeven Years before then laſt paſt, was an Houſholder, within the Precincts of the ſaid Manor; and that at the Court Baron of the ſaid *W. T.* held on the Day, &c. in the Year of the Reign, &c. by the then Homage of that Court, to wit, by the Oath of *E. F.* and *G. H.* and eleven others, then and there charged and ſworn to inquire of the Articles concerning the ſaid Court Baron, it was preſented, that the ſaid *C. D.* had grinded all his Corn and Grain, expended in his Houſe before the laſt Court then foregoing, at other Mills out of the ſaid Manor: Whereupon, by the ſame Court, it was then and there conſidered, that the ſaid *C. D.* ſhould be thereof in Mercy, which Amercement by *L. K.* and *M. N.* then Affeerers of the ſaid Court, in the ſame

Court

Court chosen and in due Manner sworn, then and there was affeered to Six Shillings and Eight Pence; and because the said Six Shillings and Eight Pence, for the said Amercement so affeered, the same Time in which, &c. to the said *W. T.* were in Arrear, and yet are unpaid, the aforesaid *A.* as Bailiff of the said *W.* well acknowledges the taking of the Cattle aforesaid, in the said Place, in which, &c. and justly, &c. for the same Six Shillings and Eight Pence, for the Amercement to the said *W. T.* being in Arrear and not paid, as in Parcel of the said Manor, &c.

And the said *C.* saith, that the said *A.* as Bailiff of the said *W. T.* for the Reason before alledged, the taking of the Cattle aforesaid, in the said Place in which, &c. ought not justly to acknowledge; because protesting, that there is not had, nor from the Time whereof the Memory of Man is not to the contrary, was had in the Manor of *M.* aforesaid, any such Custom as the said *A.* hath above alledged; and protesting also, that the said *W. T.* and all those whose Estate the said *W.* now hath, and the same Time of the taking, &c. had, in the Manor aforesaid, with the Appurtenances, from the whole Time whereof the Memory of Man is not to the contrary, have not used and been accustomed to distrain every such Houlholder, against the Custom aforesaid offending, as aforesaid, for every such Amercement so affeered, and being in Arrear unpaid, by any Goods or Chattels of every such Houlholder, within the Precincts of the Manor aforesaid; also protesting, that at the said Court of the said *W. T.* at his Manor aforesaid held, the Day of, &c. in the Year of

the Reign, &c. aboveſaid, by the Homage of the ſaid Court of the ſaid Manor, it was not preſented that the ſaid *C. D.* grinded all his Corn expended in his Houſe, before the laſt Court then foregoing, at other Mills out of the ſaid Manor, and not at the ſaid Mills of the ſaid *W. T.* within the Manor aforeſaid, to the Damage of the ſaid Lord of the Manor, and againſt the Cuſtom of the Manor aforeſaid, as the ſaid *A.* hath above alledged: For Plea the ſaid *C.* ſaith, that the ſaid *A.* the ſame Day, &c. in the Year of the Reign, &c. aboveſaid, at *T.* aforeſaid, of his own Wrong in the ſame Place, called *F.* took the Two Heifers of the ſaid *C.* and them unjuſtly detained, againſt Sureties and Pledges, until, &c. as he above againſt him complains; without that, that the ſaid Meſſuage, with the Appurtenances, whereof, &c. is, and at the ſame Time of the taking, &c. and alſo from the Time whereof the Memory of Man is not to the contrary, was Parcel of the Manor of *M.* aforeſaid, as the ſaid *A.* hath above alledged; and this he is ready to verify: Whereupon, for that the ſaid *A.* the taking of the Cattle aforeſaid, in the ſaid Place in which, &c. above acknowledges, the ſaid *C.* prays Judgment, and his Damages, by Occaſion of the taking, and unjuſt detaining of the Cattle aforeſaid, to him to be adjudged, &c.

And the ſaid *A.* as before ſaith, that the ſaid Meſſuage, with the Appurtenances, whereof, &c. the ſame Time in which, &c. was Parcel of the ſaid Manor of *M.* aforeſaid, as he hath above alledged; and of this he puts himſelf upon the Country, and the ſaid *C.* doth likewiſe, &c. And thereupon the ſaid *C.* ſaith, that

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the ſaid *W. T.* Eſq; is now Sheriff of the County aforeſaid, and that he the ſaid *C.* holds of the ſaid *W. T.* the ſaid Meſſuage, with the Appurtenances, and alſo, *&c.* in *T.* aforeſaid, whereof, *&c.* for a Term of Years yet to come, and for that Reaſon he prays the Writ of the Lord the King *de Venire Facias* here of Twelve, *&c.* to the Coroners of the ſaid Lord the King, in the County aforeſaid, to be directed to try the Iſſue aforeſaid: And becauſe the ſaid *A.* this doth not deny, it is commanded to the Coroners of the County aforeſaid, that they cauſe to come here, the Day, *&c.* Twelve of the Neighbourhood, *&c.* by whom, *&c.* and who neither, *&c.* to Recognize, *&c.* becauſe as well, *&c.*

A Writ de Homine Replegiando.

GEORGE the Second, *&c.* To the Sheriff of *S.* Greeting: We command you, that juſtly and without Delay you cauſe to be replevied *A. B.* and *C. D.* whom your ſelf did take, and taken do hold, as is ſaid; or whom *E. F.* took, and taken doth hold, *&c.* unleſs they, or either of them, were taken by our ſpecial Precept, or of our Chief Juſtice, or for the Death of any Man, or Treſpaſs in our Foreſt, or any other Right, wherefore according to the Cuſtom of our Kingdom of *England* they are not repleviable; that no more Clamour thereof we may hear, for Defect of Juſtice. Witneſs, *&c.*

An Alias *and* Pluries *to this Writ is as follows:*

WHereas we oftentimes commanded you, that juſtly, &c. you ſhould cauſe to be replevied *A. B.* whom *E. F.* took, and taken holds as 'tis ſaid, unleſs he had been taken by our ſpecial Precept, or of our Chief Juſtice, &c. wherefore according to the Cuſtom of our Kingdom of *England* he is not repleviable; or that you ſhould ſignify to us the Cauſe wherefore, &c. And you return'd to us, that you did go to the Houſe of the ſaid *E. F.* there to replevy the ſaid *A. B.* according to the Direction of our Writs or Mandates aforeſaid: But the ſaid *E.* would not permit Delivery to be made of the Body of the ſaid *A.* becauſe he affirmeth him to be his Servant and a Fugitive from him, claiming Right of Servitude in the Perſon of him *A.* within his Houſe, &c. We knowing that the ſaid *A.* by ſuch Taking and Claim loſes the Benefit of his Freedom, therefore command you, that if the aforeſaid *A.* ſhall find ſufficient Pledges, &c. to be before us, on the Day, &c. to anſwer the ſaid *E.* and if, &c. then the ſaid *A.* in the mean Time do you cauſe to be replevied, according to the Tenor of our Command, &c. And nevertheleſs if the ſaid *A.* ſhall ſecure you in proſecuting his Claim, &c. then put by Sureties, &c. the aforeſaid *E.* that he be before us, on the Day aforeſaid, to the ſaid *A.* of the Taking and Claim aforeſaid to anſwer; and have you there the Names of the Pledges, and this Writ, &c.

A Declaration in Quare Impedit, *where the Plaintiff was ſeiſed of the Advowſon in Fee.*

Bucks, ſſ. W. Biſhop of *Lincoln*, and *A. B.* Clerk were ſummoned to anſwer *C. D.* Gent. of a Plea, that they permit the ſaid *C. D.* to preſent a fit Perſon to the Vicarage of the Church of *N.* which is vacant and belongs to his Gift, *&c.* And whereupon the ſaid *C. D.* by, *&c.* his Attorney ſaith, that whereas one *T. S.* was ſeiſed of the Rectory of *N.* in the County aforeſaid, whereunto the Advowſon of the Vicarage of the Church aforeſaid doth belong, in his Demeſne as of Fee; and being ſo thereof ſeiſed, to the ſame Vicarage then vacant, preſented one *R. H.* his Clerk, who at the Preſentation of the ſaid *T.* was admitted and inſtituted in the ſame, in Time of Peace, in the Time of the Lord the King that now is; and the ſaid *T.* of the Rectory aforeſaid, with the Appurtenances, to which, *&c.* in Form aforeſaid being ſeiſed, a certain Fine was levied in the Court of the ſaid Lord the King, of the Common Bench here, to wit, at *Weſtminſter* in the County of *Middleſex*, in, *&c.* Term, in the Year of the Reign, *&c.* before Sir *R. E.* and, *&c.* between *B. D.* Eſq; and *E. F.* Plaintiffs, and the ſaid *T. S.* and *N. W.* Gent. and *M.* his Wife Deforceants of the Rectory aforeſaid, with the Appurtenances, whereto, *&c.* amongſt other Things, by the Name of Two Meſſuages, *&c.* as in the ſaid Fine, whereof a Plea of Covenant was ſummoned between them in the ſame Court, to wit, that the ſaid *T. N.* and *M.* acknowledged

ledged the ſaid Tenements, Rectory and Tithes, with the Appurtenances, and the Advowſon aforeſaid, to be the Right of the ſaid *B.* as thoſe which the ſaid *B.* and *E.* had of the Gift of the ſame *T. N.* and *M.* and thoſe they remiſed, and quit-claimed of and from them the ſaid *T. N.* and *M.* and their Heirs, to the ſaid *B.* and *E.* and the Heirs of the ſaid *B.* for ever: And furthermore the ſaid *T.* granted, for himſelf and his Heirs, that they would warrant to the ſaid *B.* and *E.* and the Heirs of the ſaid *B.* the ſaid Tenements, Rectory and Tithes aforeſaid, with the Appurtenances, and the Advowſon aforeſaid, againſt the ſame *T.* and his Heirs for ever. And further the ſaid *N.* and *M.* granted for themſelves, and the Heirs of the ſaid *M.* that they would warrant to the ſame *B.* and *E.* and the Heirs of the ſaid *B.* the ſaid Tenements, Rectory and Tithes aforeſaid, with the Appurtenances, and the Advowſon aforeſaid, againſt the ſaid *N.* and *M.* and the Heirs of the ſaid *M.* for ever. Which ſaid Fine in Form aforeſaid levied and had, was levied to the Uſe of *L. E.* and *J. B.* and the Heirs of the ſaid *L.* for ever; by Pretence of which ſaid Fine, and by Force of a certain Statute made in the Parliament held at *Weſtminſter* in the County of *Middleſex* in the 27th Year of *Hen.* the 8th, King of *England*, for transferring of Uſes into Poſſeſſion, the ſaid *L.* and *J.* were ſeiſed of the Rectory aforeſaid, with the Appurtenances, whereunto, &c. in their Demeſne as of Fee, to wit, the ſaid *L.* as in Fee and Right, and the ſaid *J.* as of Freehold for Term of his Life; and being ſo thereof ſeiſed, the ſame *L.* and *J.* afterwards, to wit, the Day of, &c. in the Years of the Reign, &c.

&c. at *N.* aforesaid, by their certain Writing, which the aforesaid *C. D.* with the Seals of the said *L.* and *J.* sealed, here brings into Court, whose Date is the same Day and Year, granted to the said *C.* and one *W. M.* the Rectory aforesaid with the Appurtenances, whereto, &c. amongst other Things, to have and to hold to the said *C.* and *W.* and the Heirs of the said *C.* for ever. By Virtue of which Grant the said *C.* and *W.* were seised of the Rectory aforesaid, with the Appurtenances, whereto, &c. in their Demesne, to wit, the said *C.* as of Fee and Right, and the said *W.* as of Freehold for Term of his Life: And the same *C.* and *W.* being so thereof seised, the said *W.* before the Day of Purchasing the Original Writ of the said *C.* to wit, the Day and Year, &c. at *N.* aforesaid, by his certain Writing of Release, which the said *C.* with the Seal of the same *W.* sealed, here brings into Court, the Date whereof is the same Day and Year, remised and released to the said *C.* and his Heirs, his whole Estate, Right and Demand, of and in the Rectory aforesaid, with the Appurtenances, unto which, &c. amongst other Things; whereby the said *C.* was sole seised of the Rectory aforesaid, with the Appurtenances, whereunto, &c. in his Demesne as of Fee. And the said *C.* further saith, that by a certain Act made in the Parliament of the said King *Henry* the 8th held at *Westminster* aforesaid, in the 21st Year of his Reign, amongst the rest it was enacted and established by the Authority of the same Parliament, that if any Person or Persons who hath or have one Benefice, with the Cure of Souls, being of the Yearly Value of Eight Pounds, or above, shall accept or take any other

other Benefice, with Cure of Souls, and shall be instituted and inducted into the Possession of the same, that then and immediately after such Possession so thereof had, the First Benefice shall be void in Law; and that then it shall be lawful for any Patron having the Advowson thereof, to present another Person to the same; and that the Person so presented shall have the Profits in such Manner and Form, as if the Incumbent had died, or resigned, any Liberty, Union, or Dispensation to the contrary thereof obtained in any thing notwithstanding; as in the said Act is more fully contained: And the same *C.* further saith, that the said Benefice of the Vicarage aforesaid, at the same Time wherein the said *R. H.* as aforesaid, was admitted and instituted into the same, and always afterwards hitherto was, and yet is a Benefice with the Cure of Souls, and of the Yearly Value of 8 *l.* and more, to wit, of the Yearly Value of One Hundred Pounds; and that the said *R.* having the said Benefice of the Vicarage of the Church aforesaid, after the making of the said Act, and before the Day of the Purchasing of the Original Writ of the said *C.* that is to say, the Day, *&c.* in the Year of the Reign, *&c.* at *P.* in the County of *H.* another Benefice with the Cure of Souls, to wit, the Rectory of *P.* in the same County accepted and took, and into the Possession of the said Church of *P.* was admitted, instituted and inducted; by which said Acceptance, and taking of the said Benefice of the said Rectory of *P.* and the Admission, Institution and Induction of the said *R.* into the same, no fit Person being presented to the said Vicarage of the Church of *N.* aforesaid, so becoming

Vacant

vacant within that Time, by the Patron, Ordinary, or Metropolitan of the ſame Vicarage, whereby the ſaid Lord the now King, by Reaſon of his Majeſty's Prerogative by Lapſe of Time to him in Form aforeſaid devolved, to the ſaid Vicarage of the Church of *N.* ſo being void, preſented the ſaid *A. B.* his Clerk, who at the Preſentation of the ſaid Lord the King before the Day of purchaſing the Original Writ of the ſaid *C.* to wit, the Day of, *&c.* in the Year of the Reign, *&c.* aboveſaid, was admitted, inſtituted and inducted into the ſame, in the Time of Peace, in the Time of the Lord the King that now is. And the ſaid *C.* further ſaith, that by a certain other Act made in the Parliament of Queen *Elizabeth*, held at *Weſtminſter* aforeſaid, in the 13th Year of her Reign, amongſt other Things, it was enacted by the Authority of the ſame Parliament, that every Perſon after the End of the ſame Seſſion of that Parliament, to be admitted to a Benefice, with the Cure of Souls, unleſs he within two Months after his Induction, doth publickly read the Articles of Religion, *&c.* in the Church whereof he hath his Cure, in Common Prayer Time, with Declaration of his Aſſent thereto, he ſhall upon every ſuch Default be deprived *ipſo facto*; as in the ſame Statute is more fully contained: And further the ſaid *C.* ſaith, that the ſaid *A. B.* the Day, *&c.* in the Year of the Reign, *&c.* aboveſaid, unto the ſaid Benefice of the Vicarage of the Church of *N.* aforeſaid, to which Church belonged Cure of Souls, as aforeſaid, being admitted, inſtituted and inducted in the ſame, did not publickly read in the ſaid Church of *N.* whereof, as aforeſaid, he had the Cure of Souls,

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in the Time of Common Prayer there, the ſame Articles within Two Months next after his Induction into the ſaid Vicarage; whereby the ſaid *A.* for that Default, by Virtue of the ſaid Act made in the 13th Year of Queen *Elizabeth* aboveſaid, was *in facto* immediately deprived, and the ſame Vicarage was vacant, by the Deprivation of the ſaid *A. B.* and yet is void: And for that Reaſon, unto the ſaid *C.* a fit Perſon to the ſaid Vicarage it now belongs to Preſent; and the ſaid Biſhop and *A.* him unjuſtly hinder, whereupon, &c. to the Damage, &c.

A Plea of Not Informed, and Judgment, &c. *in a* Quare Impedit.

AND the ſaid Biſhop, *A. B.* and *T. B.* by, &c. their Attorney, come and defend, &c. and the ſaid Attorney ſaith, that he is not informed by the ſaid Biſhop, *A.* and *T.* his Clients, to give any Anſwer for the ſame Biſhop, *A.* and *T.* to the ſaid *C. D.* in the Action aforeſaid; and nothing elſe thereunto ſaith; whereby the ſaid *C.* remains againſt the ſaid Biſhop, *A.* and *T.* thereof undefended, &c. Therefore it is conſidered, that the ſaid *C. D.* recover againſt the ſaid Biſhop, *A.* and *T.* their Preſentation to the Vicarage aforeſaid; and that they have a Writ to *W.* Archbiſhop of *Canterbury*, of all *England* Primate and Metropolitan, for that the aforeſaid Biſhop is a Party and named in the ſame Writ, that notwithſtanding the Reclaim of the ſaid Biſhop, *A.* and *T.* a fit Perſon to the Vicarage aforeſaid, at the Preſentation of the ſaid *C. D.* he admit; and the ſaid Biſhop, *A.* and *T.* in

in Mercy, &c. And becauſe it is not certainly known, whether the Vicarage aforeſaid be full, or not, or how much Time of Six Months hath paſſed ſince the ſaid Vicarage began to void, nor how much the ſame Vicarage is worth by the Year, according to the true Value of the ſame; the Sheriff is commanded, that by the Oath of honeſt and lawful Men of the County aforeſaid, he diligently Inquire if the ſaid Vicarage be full or not; and if it be full, then at whoſe Preſentation, or of whom it is full; and if Six Months have paſſed, from the Time wherein the ſaid Vicarage became laſt Vacant; and how much the ſame is worth by the Year, according to the true Valuation thereof: And the Inquiſition which, &c. he make known here in, &c. under the Seal, &c. and the Seals of, &c. and in the mean Time, let Execution ceaſe of the Writ to the Biſhop to have, &c.

Another Plea and Iſſue in Quare Impedit.

AND the ſaid Biſhop claims nothing but the Admiſſion, &c. and prays Judgment, if the ſaid *A. B.* and *C. D.* ought to have their Action aforeſaid againſt him; and the ſaid *E. F.* and *G. H.* ſay, that the ſame *A. B.* and *C. D.* their Action ought not to have againſt them, becauſe they ſay, that the ſaid *J. K.* was ſeiſed of the ſaid Manor of *N.* with the Appurtenances, to which, &c. in his Demeſne as of Fee; and being ſo thereof ſeiſed, the Day, &c. in the Year of the Reign, &c. at *N.* aforeſaid, in the County aforeſaid, by his certain Writing, which the ſaid *E.* and *G.* with the Seal of the ſaid *J.*

ſealed, here bring into Court, the Date whereof is the ſame Day and Year, by the Name of *J. K.* of, *&c.* Eſq; gave and granted, and by the ſaid Writing confirmed to the ſaid *E.* by the Name of *E. F.* of, *&c.* the firſt and next Avoidance, or Vacancy of the Church of *N.* aforeſaid, in the ſaid County of *S.* and Dioceſe of *W.* to have, hold and occupy the ſaid Avoidance of the Church of *N.* aforeſaid, whenever the ſame Church ſhall happen next to be vacant, by Ceſſion, Reſignation, Deprivation or Death of the preſent Incumbent, to the ſaid *E.* and his Aſſigns; ſo that then and for that Turn only, it ſhould be lawful for the ſaid *E.* his Executors or Aſſigns, lawfully to preſent any fit Perſon to the Ordinary of the Place, to be preſented and admitted to the ſaid Church, and by the ſame Admiſſion, Inſtitution and canonical Induction into corporal and real Poſſeſſion, of the ſame Church, with all it's Rights and Appurtenances, to requeſt of the ſaid Ordinary, and with Effect to obtain, (the Reclaim of the ſaid *J.* his Heirs, Executors or Aſſigns, for the ſaid firſt Vacancy only, and no otherwiſe, nor in any other Manner, in any thing notwithſtanding) as by the ſaid Writing more fully appears: By Virtue of which Grant, the ſaid *E. F.* was poſſeſſed of the Advowſon of the aforeſaid Church of *N.* and being ſo thereof poſſeſſed, the ſaid Church was vacant by the Death of the ſaid, *&c.* whereupon the ſaid *E.* to the ſame Church, ſo being vacant, preſented the ſaid *G. H.* his Clerk, who at the Preſentation of the ſaid *E.* was admitted and inſtituted in the ſame; without this, that the ſaid *J. K.* gave, *&c.* as the ſaid *A. B.* and *C. D.* by their Declaration above have ſuppoſed; and

and this they are ready to verify: Whereupon they pray Judgment, if the ſaid *A.* and *C.* ought to have their Action aforeſaid againſt them.

And the ſaid *A.* and *C.* as to the Plea of the Biſhop above pleaded, they pray Judgment and Writ to the Biſhop, *&c.* But let Execution thereof ceaſe until the Plea aforeſaid, between the ſaid *A.* and *C.* and the ſaid *E.* and *G.* be determined, *&c.* And as to the ſaid Plea of the ſame *E.* and *G.* above in Bar pleaded, the ſaid *A.* and *C.* ſay, that they by any thing in the ſame Plea before alledged, from having their ſaid Action againſt the ſaid *E.* and *G.* ought not to be barred; becauſe they ſay, that the ſaid *J. K.* gave the aforeſaid Manor to, *&c.* to hold, *&c.* as the ſaid *A.* and *C.* by their Declaration aforeſaid above ſuppoſe: And this they pray may be inquired of by the Country; and the ſaid *E.* and *G.* do likewiſe the ſame; therefore Twelve, *&c.*

A Declaration in a Quare Impedit, *with a Plea, Judgment and Execution.*

Wilts. ſſ. B. Biſhop of *Salisbury* was ſummoned to anſwer *D. M.* Knt. and *R. L.* Eſq; of a Plea, that he together with *H. T.* Eſq; and *S. J.* Clerk, permit them to preſent a fit Perſon to the Church of *A.* which is vacant and belongs to their Gift, *&c.* and whereupon the ſaid *D.* and *R.* by, *&c.* their Attorney ſay, that whereas the ſaid *D.* and *E.* his Wife, and the ſaid *R.* and *J.* his Wife were ſeiſed of the Advowſon of the Church aforeſaid in Groſs, by themſelves in their Demeſne as of Fee, in the Rights of the ſaid *E.* and *J.* and being ſo thereof

ſeiſed, the Church aforeſaid being vacant, preſented *T. B.* their Clerk, who at the Preſentation of the ſame *D.* and *E. R.* and *J.* was admitted and inſtituted in the ſame, in Time of Peace, in the Time of *George* late King of *Great Britain*; and the ſaid *D.* and *E.* had Iſſue between them one, *&c.* and the ſaid *J.* afterwards died, after the Death of which ſaid *E.* and *J.* the ſaid *D.* and *R.* kept themſelves in the Advowſon aforeſaid, and were thereof ſeiſed as in their Freehold, as Tenants by the Curteſy of *England*; and being ſo ſeiſed thereof, the ſaid Church afterwards became vacant, by the Death of the ſaid *T. B.* and yet is vacant: And for that Reaſon, it belongs to the ſame *D.* and *R.* to Preſent a fit Perſon now to the ſaid Church; and the ſaid Biſhop, together with the ſaid *H.* and *S.* them unjuſtly hinder, *&c.* whereupon, *&c.*

And the ſaid Biſhop by, *&c.* his Attorney, comes, *&c.* and ſaith, that the ſaid Church is within his Dioceſe of *S.* and that he claims nothing, *&c.* And the ſaid *D.* and *R.* for that the ſaid Biſhop claims nothing in the Church aforeſaid, nor in the Advowſon of the ſame, unleſs of the Admiſſion, Inſtitution and Induction, *&c.* pray Judgment and a Writ to the Biſhop, *&c.* Therefore it is conſidered, that the ſaid *D.* and *R.* recover againſt the ſaid Biſhop their Preſentation to the Church aforeſaid, and that they have a Writ to the Biſhop, that notwithſtanding the Reclaim of the ſame Biſhop to the Preſentation of the ſaid *D.* and *R.* to the Church aforeſaid, he admit a fit Perſon, *&c.* and let Execution thereof be done, for that the ſaid Plea againſt the aforeſaid *H.* and *S. J.* is determined, *&c.* as it appeareth in the ſame Roll, *&c.*

The ſaid *D.* and *R.* by, *&c.* their Attorney offered themſelves the Fourth Day againſt the ſaid *H.* and *S.* together, *&c.* of the ſame Plea, and they came not; and of the ſaid *H.* the Sheriff now returns, that he is diſtrained by his Chattels, to the Value of, *&c.* and Iſſues, *&c.* therefore they be in Mercy, *&c.* And of the ſaid *S.* the ſaid Sheriff returns, that he is dead: Therefore no other Proceſs or any other Thing to be made againſt him, *&c.* And it is further conſidered, that the ſaid *D.* and *R.* recover againſt the ſaid *H.* their Preſentation to the Church aforeſaid; and that they have a Writ to the Biſhop, that notwithſtanding, *&c.* he admit a fit Perſon to the Church aforeſaid; and the ſaid *H.* in Mercy, *&c.*

FINIS.

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